




Report

OF THE

ROYAL COMMISSION ON TRANSPORTATION

• [W.F.A. TURGEON] •
CHAIRMAN

February 9, 1951



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REPORT

OF THE

ROYAL COMMISSION

ON

TRANSPORTATION

1951



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REPORT
OF THE
ROYAL COMMISSION
ROYAL COMMISSION ON TRANSPORTATION

1951

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Traffic Adviser

W. J. WAINES, ESQ.,

Economic Adviser

H. C. HAYES, ESQ.,

Accounting Adviser

ROYAL COMMISSION ON TRANSPORTATION

Ottawa, the 9th February, 1951.

To His Excellency the Governor General in Council.

MAY IT PLEASE YOUR EXCELLENCY:

I have the honour to hand you herewith the report of the Royal Commission on Transportation, pursuant to the Order in Council of December 29th, 1948, P.C. 6033, a copy of which is hereto attached.

Your obedient servant,

W. F. A. TURGEON,

Chairman of the Commission.

P. C. 6033

CERTIFIED to be a true copy of a Minute of a meeting of the Committee of the Privy Council, approved by His Excellency the Governor General on the 29th December, 1948.

The Committee of the Privy Council have had before them a report from the Right Honourable Louis S. St. Laurent, the Prime Minister, stating that it has been represented to the Government that, by reason of economic, geographic, and other disadvantages, certain sections of Canada are adversely affected by transportation difficulties and by certain anomalies which are said to be found in the existing tariffs of tolls and rates.

The Committee, having taken cognizance of the aforesaid representations, has come to the conclusion that it would be in the public interest that an inquiry be made into the matters involved in order that all questions of economic policy within the jurisdiction of Parliament arising out of the operation and maintenance of national transportation, may be examined and reported upon.

The Committee, therefore, on the recommendation of the Prime Minister, advise:

1. That under and in pursuance of Part One of the Inquiries Act, a Commission do issue appointing

The Honourable W. F. A. Turgeon, K.C., LL.D., a member of the King's Privy Council for Canada

Henry Forbes Angus, Esquire, Professor of Economics, University of British Columbia, Vancouver, B.C. and

Harold Adams Innis, Esquire, Professor of Political Economy, University of Toronto, Toronto, Ont.,

to be Commissioners to inquire into and to report upon the aforesaid matters, the said the Honourable W. F. A. Turgeon to be Chairman;

2. That, without restricting the generality of the above terms of reference, the Commissioners should in particular:

- (a) Review and report upon the effect, if any, of economic, geographic or other disadvantages under which certain sections of Canada find themselves in relation to the various transportation services therein, and recommend what measures should be initiated in order that the national transportation policy may best serve the general economic well-being of all Canada;
- (b) Review the Railway Act with respect to such matters as guidance to the Board in general freight rate revisions, competitive rates, international rates, etc., and recommend such amendments therein as may appear to them to be advisable;
- (c) Review the capital structure of the Canadian National Railway Company and report on the advisability, (or otherwise), of establishing and maintaining the fixed charges of that Company on a basis comparable to other major railways in North America;
- (d) Review the present-day accounting methods and statistical procedure of railways in Canada, and report upon the advisability of adopting, (or otherwise), measures conducive to uniformity in such matters, and upon

other related problems such as depreciation accounting, the segregation of assets, revenues and other incomes, etc., as between railway and non-railway items;

- (e) Review and report on the results achieved under the Canadian National-Canadian Pacific Act, 1933, and amendments thereto, making such recommendations as the present situation warrants;
 - (f) Report upon any feature of the Railway Act (or railway legislation generally) that might advantageously be revised or amended in view of present-day conditions.
3. That for the purpose hereinabove stated, the Commissioners shall have all the powers vested in, or which can be conferred on Commissioners under the Inquiries Act, that all or any of the powers which can be conferred under Part Three of the Inquiries Act may be exercised by any two of the Commissioners, and that departments of the Government Service of Canada shall afford the Commission, and all persons acting under its authority, or by its direction, such assistance and co-operation in the matters of the inquiry as the Commissioners may think desirable;
 4. That the Commission be further authorized to include in its examination and to report upon all matters which the Members of the Commission may consider pertinent or relevant to the general scope of the inquiry; and
 5. That the scope of this Commission shall not extend to the performance of functions which, under the Railway Act, are within the exclusive jurisdiction of the Board of Transport Commissioners.

(Signed) A. D. P. HEENEY,
Clerk of the Privy Council.

THE ROYAL COMMISSION

CANADA

GEORGE THE SIXTH, by the Grace of God, of Great Britain, Ireland and the British Dominions beyond the Seas KING, Defender of the Faith.

TO ALL TO WHOM THESE PRESENTS shall come or whom the same way in anywise concern.

GREETINGS:

WHEREAS by reason of economic, geographic, and other disadvantages, certain sections of Canada are adversely affected by transportation difficulties and by certain anomalies which are said to be found in the existing tariffs of tolls and rates.

AND WHEREAS it would be in the public interest that an inquiry be made into the matters involved in order that all questions of economic policy within the jurisdiction of Parliament arising out of the operation and maintenance of national transportation, may be examined and reported upon.

AND WHEREAS it is expedient and Our Governor in Council has, by Order, P.C. 6033, of the twenty-ninth day of December, in the year of Our Lord one thousand nine hundred and forty-eight (copy of which is hereto annexed) authorized the appointment, under Part I of the Inquiries Act, Chapter 99 of the Revised Statutes of Canada, 1927, of Our Commissioners therein and hereinafter named to inquire into and report upon the said matters, and without limiting the general scope of their inquiry, particularly

- (a) to review and report upon the effect, if any, of economic, geographic or other disadvantages under which certain sections of Canada find themselves in relation to the various transportation services therein, and recommend what measures should be initiated in order that the national transportation policy may best serve the general economic well-being of all Canada;
- (b) to review the Railway Act with respect to such matters as guidance to the Board in general freight rate revisions, competitive rates, international rates, etc., and recommend such amendments therein as may appear to them to be advisable;
- (c) to review the capital structure of the Canadian National Railway Company and report on the advisability, (or otherwise), of establishing and maintaining the fixed charges of that Company on a basis comparable to other major railways in North America;
- (d) to review the present-day accounting methods and statistical procedure of railways in Canada, and report upon the advisability of adopting, (or otherwise), measures conducive to uniformity in such matters, and upon other related problems such as depreciation accounting, the segregation of assets, revenues and other incomes, etc., as between railway and non-railway items;
- (e) to review and report on the results achieved under The Canadian National-Canadian Pacific Act, 1933, and amendments thereto, making such recommendations as the present situation warrants;
- (f) to report upon any feature of the Railway Act (or railway legislation generally) that might advantageously be revised or amended in view of present-day conditions.

Now know ye that by and with the advice of Our Privy Council for Canada, We do by these Presents nominate, constitute and appoint the Honourable W. F. A. Turgeon, K.C., LL.D., a member of Our Privy Council for Canada; Henry Forbes Angus, Esquire, Professor of Economics, University of British Columbia, of the City of Vancouver, in the Province of British Columbia, and Harold Adams Innis, Esquire, Professor of Political Economy, University of Toronto, of the City of Toronto, in the Province of Ontario, to be Our Commissioners to hold and conduct such inquiry.

To HAVE, hold, exercise and enjoy the said office, place and trust unto the said W. F. A. Turgeon, Henry Forbes Angus and Harold Adams Innis, together with the rights, powers, privileges and emoluments unto the said office, place and trust, of right and by law appertaining, and as are more particularly set out in the said Order in Council, during Our pleasure.

AND we do hereby authorize Our said Commissioners to have, exercise and enjoy all the powers conferred upon them by the said Inquiries Act.

AND we do hereby require and direct Our said Commissioners to report to Our Governor in Council the result of their investigations, together with the evidence taken before them and any recommendations which they may see fit to make in the circumstances.

AND we do further appoint the said the Honourable W. F. A. Turgeon to be Chairman of Our said Commission.

IN TESTIMONY whereof We have caused these Our Letters to be made Patent and the Great Seal of Canada to be hereunto affixed.

WITNESS: Our Right Trusty and Well-beloved Cousin, Harold Rupert Leofric George, Viscount Alexander of Tunis, Knight of Our Most Noble Order of the Garter, Knight Grand Cross of Our Most Honourable Order of the Bath, Knight Grand Cross of Our Most Distinguished Order of Saint Michael and Saint George, Companion of Our Most Exalted Order of the Star of India, Companion of Our Distinguished Service Order, upon whom has been conferred the Decoration of the Military Cross, Field Marshal in Our Army, Governor General and Commander-in-Chief of Canada.

At Our Government House in Our City of Ottawa, this twenty-ninth day of December in the year of Our Lord one thousand nine hundred and forty-eight and in the thirteenth year of Our Reign.

By command,

E. H. COLEMAN,

Under-Secretary of State.

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INTRODUCTION

It is of interest to note that in the last thirty-four years four Royal Commissions have inquired into and reported upon transportation matters. These are:

- 1st — The Drayton-Acworth Commission which reported on April 25th, 1917;
- 2nd — The Royal Commission on Maritime Claims, known as the Duncan Commission, whose report is dated September 23rd, 1926;
- 3rd — The Royal Commission under the Chairmanship of The Right Honourable Sir Lyman P. Duff, then Chief Justice of Canada. This Commission reported on September 13th, 1932; and
- 4th — The Royal Commission on Dominion-Provincial Relations, known as the Rowell-Sirois Commission, whose report which is dated May 3rd, 1940, deals with transportation matters among other things.

Since each of these Reports contains a review of the history and the growth of Canada's transportation system, this ground will not be covered again on this occasion, except to the extent that it may be necessary to do so in the treatment of the various subjects set out in the Order in Council. It will be useful, however, to relate here the pertinent events which preceded the appointment of the Commission, in order to show how the demand for the inquiry arose and the nature of the problems presented.

The last general increase in freight rates occurred in 1920. This was followed by reductions made in 1921 and 1922. Thereafter no change was asked for until October 1946, when an application for a general increase of 30% was made by the railways. The actual increase granted in this case was 21%, but it did not become effective until April 1948. Therefore, a period of more than a quarter of a century elapsed without any general increase in freight rates. It will thus be observed that general increases or reductions in rates have occurred in periods of severe economic changes. There were substantial increases after World Wars I and II and reductions in periods of depression.

Two years after the beginning of World War II the Government of Canada instituted a system of price control administered by the Wartime Prices and Trade Board. This control applied to transportation charges, including freight and express rates, and its effect was to fix or "freeze" these charges. The railways and the Board of Transport Commissioners were restrained from increasing them without the concurrence of the controlling agency. Thus transportation charges remained at the same level during the war and for some time afterwards.

Before the inception of controls the cost of materials and of labour increased to some extent while transportation charges remained, with few exceptions, at their previous level. But the increased cost to the railways was more than offset by increased traffic arising from the demands of war. After controls were put into effect traffic volume reached record heights and the railways prospered. Following decontrol by the Wartime Prices and Trade Board the costs to the railways of material and labour increased and after the cessation of hostilities traffic fell off considerably. The financial position of the railways deteriorated and on October 9th, 1946, they applied for a general increase of 30% in rates subject to certain exceptions.

The application of the railways was contested by the seven provinces of Nova Scotia, New Brunswick, Prince Edward Island, Manitoba, Saskatchewan, Alberta and British Columbia, and the resulting decision of the Board of Transport Commissioners was appealed to the Governor in Council. Although the application was presented in October, 1946, the increase in rates (21%) did not become effective until the 8th day of April, 1948.

Then followed a demand for increased wages and a threatened strike by railway employees. An "eleventh hour" settlement resulted in a 17-cent per hour wage increase which was made retroactive to March 1st, 1948.

On July 27th, 1948, a further application was made by the railways for an additional 20% general increase in freight rates, subject to certain exceptions. At this time the appeal in the 21% Increase Case was still before the Governor in Council. On October 12th, 1948, the Governor in Council made an Order of Reference back to the Board of Transport Commissioners instructing the Board to consider the two cases concurrently.

In the meantime (on April 7th, 1948) the Governor in Council had ordered the Board of Transport Commissioners to undertake a general freight rate investigation. No such investigation had been made since the one ordered in 1925. The seven provinces were not satisfied with this action. Their respective Premiers appeared before the Federal Cabinet on April 26th, 1948, not yet by way of appeal from the 21% Case (the right to appeal had been reserved) but, as they said, in order to discuss "a common problem affecting the whole of Canada," and referring to "the economic well-being of our system" and to "the unity of Canada as a whole," and asking for an investigation of Canada's transportation policy by a Royal Commission.

The Government rejected the request for a Royal Commission for reasons set out in a letter dated July 12th, 1948, from the late Prime Minister of Canada to the several provincial Premiers. The letter referred to a proposed reorganization of the Board of Transport Commissioners, to the above mentioned order for a general investigation of the rate structure, and to an application by British Columbia then pending before the Board for the removal of the Mountain Differential.

The seven provinces then appealed formally to the Governor in Council on July 29th, 1948, from the 21% increase decision on numerous grounds. They joined to their appeal a further request for the appointment of a Royal Commission as being the only means whereby a satisfactory solution of "the larger problem of establishing proper principles for equalization in rate making" could be found. They stated that the Board of Transport Commissioners "must break new ground"; they referred to the necessary establishment of "an improved uniform basic structure" and to a "revision of the Canadian freight rate structure broader and more far-reaching than anything heretofore accomplished by the Board under the terms of the Railway Act," and stated that such revision should involve a complete recasting of the statutory provisions relating to rates and of the authority of the Board with respect thereto.

Canada's two major political parties held conventions in the autumn of 1948, their principal business being to select new party leaders and to adopt "platforms". Both conventions passed resolutions complaining of "discrimination" in freight rates and of other anomalies in the transportation system. One of these resolutions asked for the appointment of a Royal Commission of inquiry and the other called for an "investigation".

On December 29th, 1948, the Order in Council P.C. 6033 appointing this Commission was approved by His Excellency the Governor General.

It appears therefore from the above recital of events and from the terms of the Order in Council that the Government was moved to institute this inquiry by certain representations made to it on behalf of those areas of Canada which lie outside the central area. These representations are twofold in character. They declare in the first place that these sections of Canada are in an unfavourable position, in comparison to the central area, because of "economic, geographic and other disadvantages" which burden them. They then go on to say in the

second place that, by reason of these disadvantages, these sections are confronted with difficulties arising out of the situation in which they are placed in respect to transportation and, in particular, "by certain anomalies which are said to be found in the existing tariffs of tolls and rates."

The Government having taken cognizance of these representations concluded that it would be in the public interest to order an inquiry to be made into the matters involved, "in order that all questions of economic policy within the jurisdiction of Parliament arising out of the operation and maintenance of national transportation may be examined and reported upon".

It follows therefore that while the inquiry was directed in the first place to a study of the economic ills complained of by those who made the above mentioned representations to the Government, this study is intended to lead on to an examination of all matters affecting Canada's economic policy in respect to transportation. It is only by an examination of this broad scope that the evils complained of by certain sections of the country can be understood and remedied.

It is to be noted, however, that while, as has just been said, the scope of this inquiry is broad, the inquiry is limited in this respect, viz. that all questions raised must be viewed in regard exclusively to their bearing upon the problem of transportation.

The Commission decided to hold public hearings in order to provide an opportunity for interested parties to appear and make representations. In view of the origin of the demand for the Commission, letters were written to the Premiers of all of the Provincial Governments indicating that the Commission would be pleased to hear their representations on the terms of reference, and asking them to set out in particular the economic, geographic and other disadvantages, if any, adversely affecting their respective Provinces or parts thereof, and the manner in which, by reason of such disadvantages, they were adversely affected by transportation difficulties or anomalies in existing tariffs of tolls and rates.

All Provincial Governments, except those of Ontario and Quebec, indicated their desire to make such representations and these were later made either at regional hearings or at the final hearings in Ottawa or in both places.

Letters were also sent to the Railway Association of Canada and to other organizations and associations which had indicated their interest in the inquiry, and public notices were issued in the press prior to the regional hearings in each of the cities where hearings were scheduled.

Regional hearings were held in every province of Canada during the summer and early fall of 1949, and the final hearings were held in November and December of 1949 and from February to the end of May in 1950.

Formal hearings lasted in all 138 days, furnishing over 24,000 pages of evidence and argument; 214 witnesses appeared supporting 143 formal submissions. Each of the eight provinces and the two railways as well as some of the associations were represented by Counsel throughout almost the entire proceedings.

It is noteworthy that while the inquiry was in progress the Board of Transport Commissioners filed its decision in the "Mountain Differential" case which brought to an end on July 1st, 1949, the differential in freight rates which had existed for many years for the haul over the mountains in British Columbia and Alberta. The Board also conducted a further hearing in the 21% Case and filed its decision along with a decision in the 20% application, resulting in a further 8% general increase in rates with certain exceptions. From this decision there was an appeal to the Supreme Court of Canada on a question of law.

The result of this appeal made necessary a further hearing before the Board which resulted in a decision increasing the 8% to 16%, and this decision was in turn later altered by the Board by raising the 16% to 20%.

In addition the Board of Transport Commissioners in preparation for its General Freight Rate Investigation proceeded with a "Waybill Study."

In the latter months of this period certain railway employees demanded higher wages and shorter hours and, after hearings before Conciliation Boards, refused to accept the majority findings of the Boards, conducted a strike vote and struck on August 22nd, 1950. The strike was ended on August 30th, 1950, by Act of Parliament, which had been specially convened for the purpose of dealing with the situation. The result is that the employees have since obtained their demands in full, viz. a 7-cent per hour wage increase and the 5-day, 40-hour week, by decision of the Arbitrator appointed under the special legislation passed at the emergency session.

It is with this background and under these circumstances that this Report is written.

The following Counsel took part in the proceedings:

Right Honourable J. L. Ilsley, K.C.....	Commission Counsel
(Resigned, May 1949)	
F. M. Covert, K.C.....	" "
Gaston Desmarais, K.C.....	Assistant Commission Counsel
H. E. O'Donnell, K.C.....	Canadian National Railways and Railway Association of Canada
N. J. MacMillan.....	Canadian National Railways
H. C. Friel, K.C.....	" " "
A. K. Dysart.....	" " "
Graham MacDougall.....	" " "
A. H. Hart.....	" " "
C. F. H. Carson, K.C.....	Canadian Pacific Railway
F. C. S. Evans, K.C.....	" " "
K. D. M. Spence.....	" " "
I. D. Sinclair.....	" " "
Wilson McLean, K.C.....	Province of Manitoba
C. D. Shepard.....	" " "
M. A. MacPherson, K.C.....	Province of Saskatchewan
P. C. Cronkite, K.C.....	" " "
M. A. MacPherson, Jr.....	" " "
J. J. Frawley, K.C.....	Province of Alberta
C. W. Brazier.....	Province of British Columbia
F. D. Smith, K.C.....	Province of Nova Scotia and Transportation Commission of the Maritime Board of Trade
J. J. Connolly, K.C.....	Province of Nova Scotia
J. Paul Barry.....	Province of New Brunswick
J. O. C. Campbell, K.C.....	Province of Prince Edward Island
W. E. Darby, K.C.....	" " "
P. J. Lewis, K.C.....	Province of Newfoundland
Eric G. Cook, K.C.....	" " "
W. J. Matthews.....	Department of Transport
W. P. Fillmore, K.C.....	Winnipeg Chamber of Commerce and City of Winnipeg
H. S. Scarth, K.C.....	Manitoba Pool Elevators
G. H. Smith, K.C.....	Canadian Air Line Pilots' Association

E. F. Whitmore.....	Regina Chamber of Commerce Saskatoon Board of Trade and Saskatchewan Associated Boards of Trade
W. W. Lynd, K.C.....	Saskatchewan Coal Mine Operators
H. G. Nolan, K.C.....	Edmonton Chamber of Commerce Calgary Board of Trade City of Edmonton City of Calgary Louis Petrie Limited Alberta Co-Operative Union Brock Company (Western) Limited
S. Bruce Smith, K.C.....	Alberta Forest Products Association and Trans-Canada Highway System Association
Milton Owen.....	Union Steamship Company
H. F. MacPhee, K.C.....	Associated Boards of Trade of Prince Edward Island and West Point Ferries Limited
Honourable Charles G. Power, K.C.....	Canada and Gulf Terminal Railway
W. P. Power.....	" " " " "
F. R. Hume.....	Canadian Automotive Transportation Association
W. L. Rapoport.....	" " "
R. Kerr.....	Board of Transport Commissioners for Canada
R. H. Milliken, K.C.....	Saskatchewan Wheat Pool
M. M. Porter, K.C.....	Alberta Wheat Pool
G. F. Henderson.....	United Grain Growers, Limited
J. B. McEvoy, K.C.....	Associated Newfoundland Industries
G. H. Steer, K.C.....	United Grain Growers, Limited Alberta Federation of Agriculture
C. W. Clement, K.C.....	Edmonton and Calgary Chambers of Commerce and the Corporations of Calgary and Edmonton

LIST OF BRIEFS AND WITNESSES

BRIEF	WITNESS
Abitibi — Economic Planning Council of	Lamontagne, Maurice Lebel, Gilbert
Alberta Associated Chambers of Commerce and Agriculture	Martin, James
Alberta Co-Operative Union	Bowlen, B. J.
Alberta Dairymen's Association	Johnstone, E.
Alberta Federation of Agriculture	McFall, J. R. Marler, Roy
Alberta Forest Products Association	Swanson, Robert W.
Alberta — Government of	Manning, Honourable E. C. Stewart, Professor Andrew Darling, H. J. Harries, Hu Locklin, Professor D. P. Morrison, Kenneth J.
Alberta Poultry Producers Limited	Kapler, K. V. Cook, Albert W.
Alberta Branch Canadian Seed Growers Association	Dickinson, F. L.
Alberta Crop Improvement Association	Dickinson, F. L.
Alberta Seed Growers Co-Operative Limited	Dickinson, F. L.
Alberta Wheat Pool	Wesson, John H.
Joint Submission of Manitoba Pool Elevators, Saskatchewan Co-Operative Producers	
Algoma Steel Corporation Limited	Fogo, Senator J. G., K.C.
Anglo-Canadian Oils Limited	Christian, R. J.
Associated Newfoundland Industries Limited	McEvoy, J. B., K.C. Johnson, Arthur
Bartram Paper Products Company Limited	Bolton, G. R.
Bella Coola Consumers Co-Operative Association	Gargrave, Herbert
Blowey-Henry Limited	Cairns, C. V.
Bonar & Bemis Limited	Bolton, G. R.
Bowater's Pulp and Paper Company Limited	Murphy, Gerald F.
British Columbia Federation of Agriculture	Heady, C.
British Columbia Feed Manufacturers Association	Alton, E. J.
British Columbia Fruit Growers' Association	Ewer, H. B.
British Columbia — Government of	Wismer, Honourable Gordon Brown, J. E. Carrothers, William A. Brown, William Jackson, S. K. Kent, Lionel P.
British Columbia Lumber Manufacturers' Association	Robson, J. G.
British Columbia — Mining Association of	Mitchell, Charles H. Ablett, E. B.
British Columbia Paper Manufacturers and Converters	Bolton, G. R.
British Columbia Tugboat Owners' Association	Lindsay, J. A.
Brock Company (Western) Limited	Harvey, John Henry
Canada and Gulf Terminal Railway	Power, Honourable C. G., K.C. Power, W. P.
Canada Steamship Lines Limited	Hansard, Hazen, K.C.
Canadian Air Line Pilots' Association	Eddie, A. R.

BRIEF	WITNESS
Canadian Automotive Transportation Association.....	Magee, John Taylor, Jack Buckman, Gene L. Goodman, J. O. Archambault, Camille
Canadian Aberdeen Angus Association.....	Salter, Hardy
Canadian Boxes Limited.....	Bolton, G. R.
Canadian Hereford Association.....	Salter, Hardy
Canadian Percheron Association.....	Salter, Hardy
Canadian Congress of Labour.....	Forsey, Dr. Eugene McGuire, J. E.
Canadian Co-Operative Implements Limited.....	Brown, John B.
Canadian Co-Operative Processors Limited.....	Harding, D. E.
Canadian Electrical Manufacturers' Association.....	Simpson, Bruce N. Reilly, Leo M.
Canadian Federation of Agriculture.....	Hannam, H. H. Hope, Dr. E. C.
Canadian Food Processors' Association.....	Robinson, Phil R. Caldwell, W. R.
Canadian Industrial Traffic League.....	Paul, George
Canadian Manufacturers' Association.....	Brown, Stuart B.
Canadian National Railways.....	Gordon, Donald M. Cooper, T. H. Fairweather, S. W.
Canadian Pacific Railway Company.....	Walker, George A., K. C. Crump, Norris R. Jefferson, C. E. Liddy, S. J. W. Thompson, James C. Newman, William Arthur McDougall, Professor J. L. Armstrong, P. C. Jones, Allen Northey Norman, Henry Gordon Elliott, Courtland Armstrong, John E.
Canadian Pulp and Paper Association.....	Hawkins, Charles E.
Carry, C. W. Limited.....	Carry, C. W.
Co-operative Vegetable Oils Limited.....	Friesen, David K.
Coulee — Rural Municipality of.....	Ward, Arthur
Creamette Company of Canada Limited.....	Williams, Robert Williams, George J.
Dominion Joint Legislative Committee, Railway Transportation Brotherhood (International Railway Labour Organization).....	Kelly, Arthur J.
Dominion Steel and Coal Corporation Limited.....	Forsyth, L. A., K.C.
Dower Brothers Limited.....	Holt, Archie A.
Eastern Provincial Airways Limited.....	Blackwood, Captain E. W.
Edmonton Chamber of Commerce.....	Harries, Hu
Calgary Chamber of Commerce,	Hatfield, C. E.
City of Edmonton and	McGreer, Eric D.
City of Calgary	
Federated Co-Operative Services Limited.....	Purdy, W. J.
Federation of Automobile Dealer Associations of Canada	McCullough, E. A. Wilson, H. I.

BRIEF	WITNESS
"Fill-the-Gap" Association.....	Dudragne, Noel
Furness Red Cross Line, Furness-Warren Line and Newfoundland Canada Steamships Limited.....	Daley, G. McL. Williams, J. L. Barnstead, Walter O. Neale, Walter
Gainers Limited.....	Neale, Walter
Garment Manufacturers' Association of Western Canada ..	Guttman, H. H.
Grand Prairie Co-Operative Livestock Marketing Asso- ciation Limited.....	Allen, Hugh W.
Great West Garment Company Limited.....	Roscoe, R. W.
Hudson Bay Route Association.....	MacNeill, R. H. Brockelbank, Honourable J. H.
Holstein-Friesian Association..... (Canadian National Livestock)	Powell, John E. MacArthur, P. D. Wilson, William R.
Husky Oil and Refining Limited.....	Ainsworth, Fred Knight, A. C.
Industrial Development Board of Manitoba.....	Parr, W. L.
Interior Lumber Manufacturers Association	Collins, Harold B.
International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, American Federation of Labour.....	MacArthur, A. F.
Jasper Chamber of Commerce.....	McKay, Donald K.
Jones, Gordon W.....	Jones, Gordon W.
Latta, D. G. Limited.....	Dworkin, David L.
Levis, P.Q., City of	Bourget, M., M.P.
Lloydminster Petroleum Association.....	Watson, Harold D.
Local Council of Women — Regina.....	Thomson, Mrs. Mary
Louis Petrie Limited.....	Lewis, Harold V.
MacDonalds Consolidated Limited.....	Maddison, H. W. J.
Manitoba Co-Operative Wholesale Limited.....	Chown, E. B.
Manitoba Branch Canadian Seed Growers Association ..	Dickinson, F. L.
Manitoba Crop Improvement Association.....	Dickinson, F. L.
Manitoba Dairy and Poultry Co-Operative Limited....	Goodman, F. J.
Manitoba Federation of Agriculture and Co-Operation...	Wilton, J. McLean, J. T.
Manitoba — Government of.....	Campbell, Honourable D. L. Moffat, R. E.
Manitoba Pool Elevators.....	McConnell, G. N.
Maritime Board of Trade—Transportation Commission of the.....	Matheson, Rand H. Morrow, Clarence J. Sutton, R. D. Bigelow, John R. Fisher, C. M. P. French, A. R.
Mid-West Metal Mining Association.....	Shepherd, F. D.
Moncton — Town Planning Commission for the Metropo- litan Area of Greater.....	Frost, S. R.
Mutch, R. E. and Company.....	Mutch, R. E.
National Paper Box Company.....	Bolton, G. R.

BRIEF	WITNESS
New Brunswick, Province of.....	Love, Prof. R. J. Crandlemire, Harold Tooke, Alec Cunningham, G. C. Estey, Frank D. MacKay, Colin
Newfoundland Board of Trade.....	Ayre, Lewis H. M. Miller, Edgar Brookes, Lewis
Newfoundland — Government of.....	Smallwood, Honourable J. R. McNamara, George C. French, Reginald M. Dalton, Captain M. G. Sparkes, Reginald F. Russell, Hazen A. Simpson, Frank
Northumberland Ferries Limited.....	Mutch, R. E.
Nova Scotia — Government of.....	MacDonald, Honourable Angus Egan, Harold J.
Ontario Mining Association.....	Harris, Alexander
Ouimet, M. Seraphin.....	Ouimet, M. Seraphin
Pacific Mills Limited.....	Bolton, G. R.
Peace River Block — Boards of Trade, Chambers of Commerce of..... (Boards of Trade of the Cariboo District)	Turgeon, Senator Gray Murray, George M., M.P.
Pioneer Electric Limited.....	Noonan, Richard
Prince Edward Island — Boards of Trade.....	Kickham, Thomas J. Proffit, R. A. Morris, P. L. Shaw, Gordon Morris, John H. Thompson, George P. Higgins, Wallace L.
Prince Edward Island — Government of.....	Jones, Honourable J. W. Rogers, B. Graham Offer, Elmer E. Scales, Austin A. Gorman, Eugene M. O'Brien, Jerome Reddall, Charles P. MacFarlane, Lorne H. Thompson, Colonel C. C.
Quebec — Chamber of Commerce of the Province of....	La Tour, Gilbert
Quebec — City of and Chamber of Commerce of the City of.....	Power, Frank Poisson, Y.
Railway Association of Canada.....	Brass, J. A. Gaffney, F. A.
Regina Chamber of Commerce.....	Whitmore, E. F.
Saskatoon Board of Trade and Saskatchewan Associated Boards of Trade	
Saguenay Council of Economic Planning.....	Grenier, P.
Saint John Board of Trade.....	Blake, A. F. Mortimer, Frederick C.
Saskatchewan Branch Canadian Seed Growers' Association.....	Dickinson, F. L.
Saskatchewan Cattle Breeders' Association.....	Connell, G. F.
Saskatchewan Coal Mine Operators.....	Nord, F. H.

BRIEF	WITNESS
Saskatchewan Co-Operative Producers Limited.....	Robertson, George W.
Saskatchewan Dairy Association.....	Turnbull, J. S.
Saskatchewan Federated Co-Operatives Limited.....	Fowler, H. L.
Saskatchewan Forage Crop Growers Co-Operative Marketing Association.....	Dickinson, F. L.
Saskatchewan — Government of.....	McIntosh, Honourable L. F.
	Britnell, Dr. G. E.
Saskatchewan — Government of.....	Britnell, Dr. G. E.
Also Governments of Manitoba and Alberta (re Crowsnest Pass Rates)	Harries, Hu Moffat, R. E.
Saskatchewan Homemakers' Clubs.....	Wade, Mrs. Mary C.
Saskatchewan Honey Producers Co-Operative Marketing Association Limited.....	Pugh, Roy M.
Saskatchewan Motor Dealers' Association.....	Pinch, John
Saskatchewan Poultry Board.....	Brown, W. W.
Saskatchewan Seed Grain Co-Operative Limited.....	Dickinson, F. L.
Saskatchewan Stock Growers' Association.....	Wiebe, Herbert
Ship-by-Rail Association.....	Huston, H. B.
Sidney Roofing and Paper Company Limited.....	Bolton, G. R.
Southern Alberta Co-Operative.....	Cameron, A. A.
Vegetable Growers' Association Limited	
Southern Alberta Sheep Breeders' Limited.....	Benson, William S.
Surrey Co-Operative Association.....	Creelman, B. G.
Trans-Canada Highway System Association (Yellowhead Route).....	Smith, S. Bruce, K.C.
United Farmers of Alberta Co-Operative Limited.....	Priestley, Norman F.
United Farmers of Canada (Saskatchewan Section) Limited.....	Bickerton, George R.
United Grain Growers.....	Brownlee, Honourable J. E.
Vancouver Board of Trade.....	Norris, T. G., K.C.
Vancouver — City of.....	Thompson, Mayor Charles E.
Vulcan Iron and Engineering Limited.....	Stetchishin, V. M.
West Point Ferries Limited.....	Pate, Peter W. Phillips, Sanford
Western Stock Growers' Association.....	Coppock, Kenneth
Western Supplies Limited.....	Armstrong, Henry B.
Westminster Paper Company.....	Bolton, G. R.
Winnipeg Chamber of Commerce.....	Fillmore, W. P., K.C.
and the City of Winnipeg	Walker, John
Woollings Forest Products.....	Woollings, E. V.
Woollings, T. S. and Company.....	Duffy, H. E.
Young, Edward James.....	Young, Edward James
Alberta Provincial Sheep Breeders' Co-Operative Association Limited.....	No Witness
Board of Trade, City of Montreal.....	"
Board of Trade, City of Toronto.....	"
Canadian Air Lines Dispatchers Association.....	"
Canadian Retail Federation.....	"
Consolidated Truck Lines Limited.....	"

Consumers of Heavy Industrial Fuel from Lloydminster	No Witness
Fort William and Port Arthur Chambers of Commerce—	
Joint Transportation Committee of the.....	“
Louisburg Board of Trade.....	“
Quebec Pulpwood Dealers — Association of.....	“
Quesnel Board of Trade.....	“
Royal Agricultural Winter Fair.....	“
Saskatchewan Association of Rural Municipalities.....	“
Truck Drivers and Helpers Union — Local 31.....	“

LIST OF CITIES WHERE HEARINGS WERE HELD

CITY	DATES
OTTAWA, Ontario.....	May 2nd, 1949
WINNIPEG, Manitoba.....	June 1st, 2nd and 3rd, 1949
REGINA, Saskatchewan.....	June 7th, 8th, 9th and 10th, 1949
CALGARY, Alberta.....	June 13th and 14th, 1949
EDMONTON, Alberta.....	June 16th and 17th, 1949
VICTORIA, British Columbia.....	June 22nd and 23rd, 1949
VANCOUVER, British Columbia.....	June 28th, 29th and 30th, 1949
HALIFAX, Nova Scotia.....	July 12th, 13th and 14th, 1949
FREDERICTON, New Brunswick.....	July 18th, 19th, 20th and 21st, 1949
CHARLOTTETOWN, Prince Edward Island.....	July 25th, 26th and 27th, 1949
QUEBEC, Quebec.....	July 30th, 1949
MONTREAL, Quebec.....	August 2nd, 1949
TORONTO, Ontario.....	August 4th and 5th, 1949
ST. JOHN'S, Newfoundland.....	September 27th, 28th and 29th, 1949
OTTAWA, Ontario.....	November 1st to December 16th, 1949, February 6th to March 31st, 1950, and April 19th to May 31st, 1950

CHAPTER I

ECONOMIC, GEOGRAPHIC AND OTHER DISADVANTAGES OF CERTAIN SECTIONS OF CANADA

Paragraph 2(a) of P.C. 6033 requires the Commission to "review and report upon the effect of economic, geographic and other disadvantages under which certain sections of Canada find themselves in relation to the various transportation services therein and to recommend what measures should be initiated in order that the national transportation policy may best serve the general well-being of all Canada."

A. INTRODUCTION

The governments of British Columbia, the three Prairie Provinces and the four Maritime Provinces all appeared before the Commission and made submissions concerning economic, geographic and other disadvantages under which their respective provinces suffered in relation to transportation. No submissions were made by the governments of the provinces of Ontario and Quebec, although invitations were sent to the Premiers of both these provinces and regional hearings were held in Toronto, Quebec and Montreal. Likewise it is significant to observe that in the recent applications for increased rates made by the railways to the Board of Transport Commissioners in the years 1946 to 1950, the provinces of Quebec and Ontario were not represented, but all the other provinces (except Newfoundland which did not enter the Union until April 1st, 1949) contested the applications and appealed all the decisions to the Governor in Council.

The attitude of the Governments of the Central provinces seems to indicate that present conditions of railway services and railway charges are considered generally satisfactory in this region, and is in marked contrast with the prevalence of discontent and of the desire for changes found in the other provinces.

In the first decision of the Board filed in the 30% application on March 30th, 1948, the position of the Board with respect to its jurisdiction and powers to reduce rates to assist industry or to equalize, through the prescription of reduced rates, production costs, geographical location, or climatic conditions, was dealt with at considerable length. The following extracts from its decision indicate clearly the opinion of the Board as to its own powers and as to the discretion left to the railways concerning these matters. Quoting with approval from its previous decision in *Re National Dairy Council of Canada* (1924), the Board said at page 53:

"The Board is given power to deal, *inter alia*, with the reasonableness of the rates. It is nowhere authorized by Parliament to be an arbiter of industrial policy. Opinions may differ as to different lines of development, but the Board's functions in approaching a rate situation are concerned with ascertaining the reasonableness of the rate, not with applying to a rate situation a preconceived opinion as to what type or method of industry should be helped by a modification of the rate.

"In other words, while members of the Board may and do, as Canadians, sympathize with policies of economic development which may through increasing diversity lead to greater economic solidarity, it is not their general opinions but the powers conferred on them by the Railway Act which determine what they can do. Very wide powers, it is true, are given under the Railway Act; but the Railway Act is not to be construed as if it were a blank cheque to be filled in as members of the Board see fit. It is not the Board's function, as delegated by Parliament, to make rates to develop business, but to deal with the reasonableness of rates either on complaint or of its own motion."

Again quoting from *C.N.R. vs. C.P.R. et al* 39 C.R.C. 1 at pp. 25-27:

"In so far as this involves the proposition that a producer's cost disadvantage should be equalized or diminished in the freight rate . . . it may be stated that this transcends the powers or functions of the Board."

and

"It is no part of the obligations of the railways, under the Railway Act, to equalize costs of production through lowered rates so that all may compete on an even keel in the same market."

and

"Railways are not required by law, and cannot in justice be required, to equalize natural disadvantages such as location, cost of production and the like."

and

"A railway company is not called upon so to adjust its rates that the shipper will always be able to carry on his business at a profit. The rate is only one item in the shipper's costs. The obligation of the railway company is to charge a reasonable rate. It is not called upon, through the reduction of the rate, to guarantee that the business will be carried on at a profit. In other words, the needs of the business and the way in which it is carried on are not the measure of the reasonableness of the rate."

and

"The Board has held that it is not concerned with equalizing costs of production, and that in matters of rates its jurisdiction relates to reasonableness of the rates."

and

"The Board has many times said that it is not concerned with equalizing costs of production. It has many times affirmed that its jurisdiction in connection with applications is concerned with reasonableness of rates, not with the rate of profit which the applicant is making."

and

"It has been held time and again that rate-regulating commissions have no right whatever to attempt to equalize geographic, climatic, or economic conditions. They are concerned simply and wholly with the question of the reasonableness of the toll which the railway company is seeking to collect for the carriage of a given commodity, irrespective of how it is made, or whence it comes."

and

"The Board has indicated that in the matter of rates, for example, its function is concerned with complaints as to unreasonableness or as to unjust discrimination, and that it is not empowered to put in rates simply to develop traffic; that is to say, the Board is not empowered by Parliament to act as an arbiter of industrial policy. If it were so empowered, there would need to be explicit words; and if such a power were conferred, the Board would then be able to pass upon the question whether an industry should be allowed to develop in one section or another. No such power has been conferred. The railway, subject to the inhibitions as to unjust discrimination, may give a reduced rate basis to develop traffic. It takes the responsibility of the profit or loss in connection with the transaction. The Board, under the Railway Act, has no profit or loss responsibility, and its intervention in the matter of rates must, as has been indicated, be concerned with matters falling within the broad categories of reasonableness and unjust discrimination, and not with a policy of developing industries through rate adjustments."

and

"The powers which are conferred upon the Board are regulative and not managerial. It is not the Board's function, as delegated by Parliament, to make rates to develop business, but to deal with the reasonableness of rates, either on complaint or of its own motion."

and

"It has been decided that the railways have powers in regard to developing traffic which are not held by the Board; that is to say, the railway, taking the risk of profit or loss, may put in a rate to develop traffic which it would not be justifiable for the Board to install. The railway may put in development rates with a view to increasing traffic, but such rates, I submit the Board has no power to put in."

B. POSITION TAKEN BY THE PROVINCES BEFORE THE GOVERNOR IN COUNCIL

Following this decision the seven provincial Governments appealed to the Governor in Council. It is important to set forth here some of the representations made in the brief submitted by the Premiers of the seven Provinces to the Cabinet on July 20th, 1948, because it was mainly as a result of these representations that the Order in Council appointing this Commission was passed:

"One of the outstanding difficulties with which the Board is confronted in its efforts, since its organization, to regulate, and control Canadian freight rates, and build up a system or a rate structure, which will, in all respects, under similar circumstances and traffic conditions, be just and reasonable to all persons and localities, has been, and is, the question of geographic disadvantage, or disability of some localities. It has been laid down as a principle that the Board's functions do not extend to the removal, by adjustment of freight rates, of these natural geographical disadvantages, which, in a country of such enormous extent and widely covered area, must naturally exist."

The brief then refers to the Judgment of the Board in the 30% application where it says:

"It has been held time and again that rate-regulating commissions have no right whatever to attempt to equalize geographic, climatic, or economic conditions. They are concerned simply and wholly with the question of the reasonableness of the toll which the railway company is seeking to collect for the carriage of a given commodity, irrespective of how it is made, or whence it comes."

The brief then says:

"In view of the opinions of the Board repeatedly expressed in the above way it seems obvious to us that any inquiry by the Board under the recent Order in Council P.C. 1487 would necessarily be restricted and limited in nature.

"Further, the legalistic attitude of mind shown in these Judgments of the Board has persisted too long for the Board to change its point of view and to give the consideration which is due to vital questions of the impact and effect of increased rates from the geographic, economic and national aspect."

The brief also says:

"The general public affected by the Order of March 30, 1948, has lost confidence in the Board's approach to the problem, and it is of the utmost importance that public opinion be considered in this regard.

"For the reasons stated the Provinces represented here feel no useful or effective purpose will be served by an inquiry before the Board and are not prepared to accept the Board as a tribunal for dealing with the broad questions which have been referred to it."

The Provincial Premiers then asked for a Royal Commission:

"With wide powers of reference enabling it to inquire into all railway problems of the country as they exist in either a geographic or an economic sense with full power to recommend any amendment to existing legislation or as to the constitution, powers and duties of the regulatory body, it could do much to promote a greater sense of national and regional security in the Dominion. We feel an opportunity should be given to the Provinces to make recommendations with regard to the terms of reference of the Royal Commission."

In the aforesaid brief, reference is made to the burden that the freight rate structure imposes on certain areas because of their geographic and economic positions and it is stated that the powers given to the Board by Parliament do not "enable it to carry out the broad and perhaps (relative to the freight rate structure) almost revolutionary changes that the Government envisages it might accomplish."

C. DIVISION INTO REGIONS

Essential differences exist in geographic, economic and other conditions in the various Provinces of Canada which might warrant a separate discussion of the disadvantages under which each Province finds itself in relation to transportation. There are, however, certain similarities in conditions in some of the Provinces which make it simpler to divide the country into sections or regions for the purposes of this chapter.

The Maritime Provinces of Nova Scotia, New Brunswick and Prince Edward Island form a geographic unit, and have somewhat similar transportation problems. All three (and Newfoundland with them) enjoy the statutory advantages provided under the Maritime Freight Rates Act.

The three Prairie Provinces of Alberta, Saskatchewan and Manitoba, likewise form a geographic unit, have similar transportation problems and similar economic aspects, and all enjoy the privilege of the statutory Crown's Nest Pass Rates.

The Province of British Columbia has certain advantages peculiar to itself, and likewise certain peculiar disadvantages which warrant it being treated in a separate category.

The Province of Newfoundland is a new province of Canada, and its problems, though in many respects similar to those of the three Maritimes Provinces, are sufficiently distinctive to warrant separate discussion.

The Provinces of Ontario and Quebec, because of their central location within Canada, their similar economies, and their apparently similar lack of concern both with the proceedings of this Commission and with those before the Board of Transport Commissioners in the rate cases from 1946 to 1950, can be dealt with together for the purposes of this chapter.

It will be convenient therefore to divide the country into the five regions indicated in the preceding five paragraphs.

1. THE MARITIME PROVINCES

(a) ALLEGED DISADVANTAGES

1. The chief disadvantage complained of is the long haul to markets and from sources of supply which places the Maritime producers at a relative disadvantage in reaching Central Canadian markets in competition with producers in that area who have a much shorter haul. This disadvantage is said to be accentuated by the Canadian customs tariff policy because it increases the dependence of the area on Central Canada instead of the Eastern United States which is claimed by the Maritime Provinces to be both the natural market for their products and the natural source of their supplies.

2. These Provinces submit that the characteristics of their economy are: (a) a marked dependence on the production of low-valued basic commodities which are sold in large part outside the area; (b) a dependence in large measure on outside services, principally in Central Canada, for producer and consumer goods, and (c) a relatively undeveloped manufacturing industry which for the most part is small-scale and hence finds it difficult to compete with the large-scale lower cost producers of Central Canada.

3. The Maritime Provinces state that when compared to Central Canada their economy is found to be deteriorating, and that this trend is influenced by the increased cost of transportation to Central Canada and by the contraction of foreign markets; for example the loss of markets for apples, lumber and pit props in the United Kingdom, and potatoes in the United States.

The case of the Maritimes may be summarized: At Confederation they were promised access to the Central Canadian market. Today, in view of the deterioration in foreign trade, particularly because of monetary and commercial restrictions, access to the Central Canadian market has become more important than ever. Isolation of the Maritimes from the Central Canadian area as a result of distance and of increased freight charges is one of the central themes put forward in their case. A witness for the Transportation Commission of the Maritime Board of Trade, when asked whether or not the Maritimes were willing to accept their disadvantages provided they retained their advantages, replied:

"The national background in connection with our Intercolonial Railway was to afford persons and industries to get into the markets of Central Canada. That is the basic principle."

The Maritime Freight Rates Act is regarded as the instrument intended to facilitate access to the Central Canadian markets. It was suggested by the same witness that this instrument is losing its effectiveness:

"The general tenor of the evidence of the Maritime approach . . . is that the changes which have taken place since the Maritime Freight Rates Act became effective in 1927 are having the effect of enhancing the difficulty of Maritime producers in reaching the highly competitive markets of Central Canada in competition with industries located closer to the markets."

Maritime shippers allege that these changes have resulted principally (1) from the increase of truck competition in Central Canada, which has had the effect of lowering rates for their competitors in that market, and (2) from the recent general horizontal increases, particularly on the long haul from the select area westward. These changes, they say, have decreased the advantages which the rates established under the Act of 1927 were intended to confer on the Maritimes.

It is argued that national customs tariff policy has operated unfavourably to the Maritimes. The following excerpt from the Report of the Royal Commission on Dominion-Provincial Relations was quoted by Maritime Counsel with approval:

"National tariff policies have probably operated unfavourably in general, since Maritime manufacturing industries producing for home consumption have been exposed to the competition of the more advantageously located manufacturing industries in Central Canada; Maritime primary industries have been burdened with increased costs; and the great shipping, commercial and financial service industries, which bulked so large at the time of Confederation, have either found it impossible to adapt themselves to changed techniques and the framework of national policies and survive, or have migrated to Central Canada."

It is contended that without the customs tariff the Maritimes would have traded more with the United States, the United Kingdom and Central and South American countries and that new industries would have developed; and that the tariff has shifted purchases from the cheaper American to the more expensive Canadian goods. Thus, it is alleged, the customs tariff policy has subsidized one part of the country and at the same time has penalized the Maritimes.

It is therefore contended that the nature of the Maritime economy, the Canadian customs tariff policy and the deterioration in foreign markets have made the Central Canadian market of vital importance to the region. Maritime

producers are said to be at a disadvantage in this market in relation to local producers owing to the long haul from the producing to the consuming centres, and similarly Maritime costs and standards of living are said to be affected by the long haul on materials and equipment from Central Canada. It is submitted that freight charges and increases in these rates must generally be absorbed by producers and consumers in the area. Horizontal increases are said to be specially detrimental to the economy because in terms of dollars they increase long haul more than short haul rates and thus increase the competitive difficulties of Maritime producers in their principal markets. The net effect of all these factors is said to place the Maritime economy at a disadvantage in relation to local producers in the Central Canadian market.

(b) CONCLUSIONS CONCERNING DISADVANTAGES OF
CARLOAD ALL-RAIL TRAFFIC OF THE MARITIME
PROVINCES (BUT NOT INCLUDING NEWFOUNDLAND)

1. Reference may here be made to the Waybill Analysis recently made by the Board of Transport Commissioners as a first important step in the conduct of their General Freight Rate Investigation pursuant to Order in Council P.C. 1487 dated April 7, 1948. This analysis is dated August, 1950, and deals with carload, all-rail traffic between points in Canada which terminated at destinations on four dates selected as representative to show the actual flow of traffic for the year 1949. This analysis does not deal with less than carload traffic which, it appears, amounts by weight to about $3\frac{1}{2}$ per cent of the amount of carload traffic and to about $6\frac{1}{2}$ per cent in revenue as compared with carload traffic; nor does it deal with international traffic, but only carload traffic originating in and destined for Canadian points.

The Waybill Analysis indicates that approximately 93 per cent of the freight traffic originating in the Maritime Provinces moves on commodity rates and that the average haul per ton is 319 miles, but that about 30 per cent of the 93 per cent moves on the average from 733 to 812 miles.

On the other hand, while approximately 80 per cent of the freight traffic originating in Central Canada moves on commodity rates and the average haul per ton is 234 miles, approximately 90 per cent of this, on the average, moves from 80 to 167 miles. It will thus be seen that, compared to Central Canada, the Maritimes Provinces do, at least on a large part of their originating traffic, suffer a disadvantage in respect to length of haul.

2. The economy of the Maritimes is highly specialized and may properly be characterized as an economy having a heavy dependence on markets external to the region itself. In 1946 roughly 40 per cent of the gainfully occupied were engaged in agriculture, forestry, fishing and mining, with about one-half of these in agriculture. About one-third were employed in trade and services and the remainder were distributed in smaller proportions among the other industries. Of about 9 per cent of those employed in manufacturing well over half were in the iron and steel and wood and paper products industries. The only other significant proportions in manufacturing were found in the vegetable and textile products industries. Agriculture, forestry, fishing and mining accounted for about 60 per cent of the net value of all goods produced, and manufacturing for about 24 per cent. Of the primary industries agriculture was the most important, with forestry and fishing next in order.

Measured in terms of the gainfully occupied, the fishing, forestry and mining industries are relatively very much more important in the Maritimes than in Canada as a whole. Construction, transport, service and trade are roughly of the same importance as elsewhere in Canada. The relative dependence of the region on a few primary industries is the most striking feature of the Maritime economy.

This high degree of specialization in the production of primary products implies a heavy dependence on markets and sources of supply outside the area. If these markets and sources of supply are distant it also implies heavy transportation charges. The main external sources of supply are Central Canada and the United States. Much of the imported food, machinery and equipment comes from Central Canada and feed grains from Western Canada. On the export side the United Kingdom and Western Europe have been very important as outlets for lumber and apples, the Mediterranean area, the West Indies and the United States for fish, and the United States for newsprint, pulp and pulpwood. The United States market has become the mainstay of the forestry industry. The potato markets are mainly in the United States and Central Canada. While formerly a large part of the produce of the area was sold outside Canada, in recent years these markets have been falling off because of trade and currency restrictions. Thus the Central Canadian market has become relatively more important. In this market Maritime products must meet the competition of local producers whose transportation costs are relatively lower.

It seems clear that growing dependence on the Central Canadian market and the relatively long haul from the Maritimes to this area are the principal reasons for Maritime complaints about freight rate increases.

4. As to the allegation that Canadian customs tariff policy has worked to the disadvantage of the Maritimes in that it has limited markets abroad, increased the cost of imported supplies and retarded industrial development in the Maritimes, and that in the absence of the customs tariff, the competition of cheaper American goods would have benefited Maritime purchasers, it must be said that it is not possible to determine how great the market would have been in the United States if there had been no Canadian customs tariff because one cannot assume that the United States would have admitted Canadian goods duty free.

It must be borne in mind, however, when dealing with the probable effect of the customs tariff in creating disadvantages for certain regions, that one of the tendencies of industry is to seek the centre of the community it serves, even where no tariff protection exists, because a central location provides an advantage in respect to the costs and facilities of transportation. And it is of course necessary here to reduce all the representations made (in so far as this can be done) to the aspect in which they appear in the light of the transportation problem.

5. The concern of the Maritimes with the problem of access to the Central Canadian market and of cheap transportation on goods drawn from that area has become acute as a result of the recent rate increases. This concern may be partly a result of the expansion of industry in time of war which was no doubt assisted by the freezing of freight rates, and of the desire to hold the gains made during the war.

(c) THE PRINCIPAL REMEDIES SUGGESTED

The principal remedies suggested by the Maritime submissions are:

- (a) Restoration of the arbitrary over Montreal that existed on July 1, 1927;
- (b) Limitations on horizontal increases;
- (c) New Brunswick in particular requests that the reduction under the Maritime Freight Rates Act be made to apply to inbound as well as outbound freight and that the 20% reduction accorded by the Act be increased to 30%;
- (d) Prince Edward Island asks that the reduction apply to inbound freight on certain articles entering into costs of production in that Province; and
- (e) An extension of the reduction granted under the Maritime Freight Rates Act beyond Levis to points as far west as Toronto or Windsor, Ontario.

All of these matters are dealt with elsewhere in this Report.

2. THE PRAIRIE PROVINCES

(a) ALLEGED DISADVANTAGES

1. The chief disadvantage complained of is the long haul to markets and from sources of supply coupled with dependence on rail transportation in the absence of truck and water competition.

2. Great stress is laid upon specialization of resources which implies dependence on outside markets for the sale of the products of the area and dependence on outside sources of supply for many consumer and producer goods. These markets and sources of supply are mainly in Central Canada, British Columbia, the United States and Western Europe.

3. The long rail haul involved in marketing the products of the area is said to be particularly burdensome because long-haul rates are high and they apply generally to low-valued bulky commodities. Moreover, many of the products are sold in markets where competing producers either have a shorter haul or have the advantage of cheaper forms of transport.

4. It was contended, too, that the Prairie economy is bordered on both the East and West by relatively barren areas that are not locally productive of rail traffic, and it was assumed that there is in consequence a heavier transportation toll on the products originating in the Prairie area—a toll which it is said the railways can levy because of their monopolistic position in that area.

5. The Provinces of Alberta and Manitoba appear to be willing to accept the disadvantage of distance as such, but complain of various features of the rate structure which they insist have intensified it.

This means that the desirability, in fixing freight rates, of mitigating the effect of distance on shippers and consignees in remote regions presents a problem of primary importance in the building up of a just and reasonable freight rate structure. Alberta further submits that rates should not be established on the basis of purely local costs and conditions.

6. A great deal was said by these Provinces about their economic disadvantages. One of the most important points made has to do with the nature of the Prairie economy arising out of the specialized character of its resources. Economic activity is mainly of a primary sort with heavy dependence on agriculture. Lack of diversification together with dependence on foreign markets for the staple products of the area means that it is vulnerable to the shocks of economic fluctuations. The prices of these products fluctuate over a wide range and the output of agricultural products is highly variable. Under these circumstances gross income fluctuates widely and net income fluctuates even more because of uncontrollable costs, including transportation costs. It is feared, therefore, that if freight rates are raised in periods of rising prices it may be difficult to have them lowered in times of falling prices. It is argued also that producers and consumers in the region bear the burden of freight charges both on incoming and outgoing traffic. For these reasons the level of freight rates has a particularly significant effect on the level of the net income of the region. These Provinces argue that the freight rate structure has impeded diversification of industry. It is asserted that transcontinental rates are detrimental to the development of local industry for distant markets in that, for example, they give Ontario an advantage over Manitoba in the British Columbia market. Alberta presented a detailed submission to the effect that rate relationships and "market rates" impede the location of secondary industry in the Province.

7. The problem of market competition is raised by the three Prairie Provinces. This problem is important for two reasons: (1) the dependence of the area on outside markets for the sale of its bulky primary produce, and (2) the long haul to these markets. For these reasons freight charges are likely to be

high in relation to the value of the products and are an important part of the cost of production and marketing. Many of the objections to specific rate practices, e.g. horizontal increases, are in part at least based on this consideration.

8. The contention that the Prairie Provinces constitute a non-competitive transportation area is put forward by all three Provinces though it is argued most fully by Alberta and Saskatchewan. It is claimed that the area is almost wholly dependent on rail transport because of the lack of water routes, the relatively undeveloped state of highway transport, and the large proportion of long-haul traffic in the area which can best be handled by rail. In other areas, it is said, and particularly in Central Canada, both highway and water competition force the railways to publish lower rates than in non-competitive areas. A greater burden of transport costs is thus imposed on the non-competitive areas since they must make up the deficiency in railway revenue when increases cannot be added to competitive rates. Counsel for Alberta stated that these things are the "core" of the transportation problem today and that they have produced a "major crisis in transportation policy."

The crisis is said to arise out of the unequal impact of carrier competition in the different regions and on different traffic movements. Alberta Counsel went on to say: "If increased costs are imposed upon the railways which are translated into freight rate increases which can be levied only on the non-competitive traffic—then I say that it would be utterly indefensible to permit the railways to extract such an increase from the non-competitive traffic and the non-competitive areas." When this point is reached, Counsel said, the non-competitive traffic must be protected from the consequences, and such protection can only come in the form of a Federal subsidy to the railways. Both Alberta and Saskatchewan appear to believe that the competitive crisis will become more serious with the passage of time. The development of the St. Lawrence-Great Lakes Waterways is considered to be a disadvantage in so far as it may result in higher local rates in the West to compensate for lower competitive rates in the East.

9. Alberta places a good deal of stress on the problem of the relation of freight rates to industrial location. The lack of secondary industry is said to be a major economic disadvantage to the province. Alberta has resources capable of local processing, e.g. livestock, and contends that the freight rate structure should not be permitted to operate against the development of secondary industry natural to the area. Certain aspects of the rate structure are said to be important. The relationship between the rates on the raw material and the finished product should be such, it is submitted, as to neutralize the effect on industrial location, i.e. the rate relationship as such should neither encourage nor discourage the development of secondary industry in a particular area. Alberta presented as an illustration examples of rates on livestock and meat products which purported to show that the rate relationships tend to encourage the export of livestock to processing plants elsewhere. It is also alleged that present methods of rate-making unfairly affect regional location of industry, e.g. long-and-short-haul discrimination, distributing rates, agreed charges, stop-off and in-transit privileges, rate groups, developmental rates and interline rates.

10. Vegetable canning in southern Alberta is cited as an example of an industry which is denied the benefit of its proximity to markets in British Columbia because vegetables canned in Central Canada can move into the West Coast market at lower rates—a case of long-and-short-haul discrimination. (This contention arises out of the existence of transcontinental water competitive rates which are dealt with elsewhere.) The existence of interline rates is said to impose a penalty on an industry which is in a location necessitating shipment to market over both railways. The existence of distributing rates is alleged to create a kind of discrimination between shipping points and shippers which may retard development at a particular location. Agreed charges are said to

discriminate against the small shipper and interfere with legitimate competition from other carriers. Stop-over or in-transit privileges are said to have an effect on industrial location, and it is urged that shippers should have the right to apply to the Board of Transport Commissioners if the railways refuse to grant such privileges. The rate grouping principle as applied to a production area is recommended in order to encourage industrial development over an area rather than at a particular point in the area.

11. It was said that generally the level of freight rates is higher in the West than in the East, and although admittedly this disparity has been considerably reduced it is contended that now, as a result of the recent increases in non-competitive rates and the non-application of the increases to competitive rates, the difference in the over-all level will increase. The inequality is said to arise mainly from differences as between East and West in the standard mileage class rates, the distributing class rates, the commodity mileage scales and the extent of low competitive rates in the East as compared with the West. The railways argue that whatever differences may exist arise out of regional economic differences relating to competition, density of traffic, differences in costs of operation and other local differences. In any case the Prairie Provinces maintain that these disparities, with the exception of those necessary to meet competition, are not justified today and that substantial equalization should prevail across the country. It is generally admitted that competition is a valid reason for regional rate differences, but it is contended that competitive rates should be under the active supervision of the Board whose duty it should be to inquire into the necessity for them and to determine whether or not they are compensatory.

12. All the Prairie Provinces contend that the benefits of national policy have not been distributed equally over the various regions and in particular that the Prairie Region has suffered from tariff policy and to some degree from railway policy. Saskatchewan argues specifically that the regional impact of national policy is of fundamental importance in assessing the economic and geographic disadvantages of the Prairie Provinces. In creating a national economy the impact of national policies is unevenly distributed and, it is said, works to the special advantage of Central Canada and to the disadvantage of the other parts of Canada.

13. Saskatchewan contends that railway policy, which was essential for the economic integration of the various regions, involved the linking of the East and West coasts by a transcontinental transportation system wholly in Canadian territory. The Intercolonial Railway and the Canadian Pacific Railway were the original means by which this was accomplished. Thus, from the beginning, the railways have been instruments of national policy, and should still be considered as such. It is asserted that artificially located railway mileage, i.e. through Canadian territory, when communication through the United States would have been more economical, has resulted in higher transportation costs than necessary. These higher costs are said to be the result of building the railway through the relatively low density traffic area between the Maritimes and Central Canada, through the high cost and low density area comprising the Precambrian Shield, through the less productive portions of the Prairie Provinces and through the Rockies by the difficult and costly passes on the southern route. While the Province of Saskatchewan did not complain of this policy as such, it did maintain that it resulted in higher rates for the shippers of the Prairie Provinces than would otherwise have been the case. This is alleged to be unjust, and Saskatchewan takes the position that where national policy has imposed higher costs of transportation on a region these costs should not be borne by the shippers but by the taxpayers in general.

14. Saskatchewan also contends that customs tariff policy has forced trade into east-west Canadian channels where it would otherwise have moved through

the United States, in which case Western Canada would have obtained a larger part of its supplies from the United States. In this respect customs tariff policy is said to be closely allied to railway policy in that it is one method of providing traffic to an all-Canadian railway system. It is claimed that this policy has forced Western Canada to buy more expensive consumer and producer goods manufactured in Central Canada rather than cheaper goods from the American Middle West. It is claimed, too, that this has accentuated the long-haul problem of the area and strengthened the monopolistic position of the railways. The effect has been higher production and living costs in the area. Again it is not argued that the national policy should have been different in aim but rather that in its execution the area should not be burdened with the high freight charges and other costs.

15. The Prairie Provinces made a basic argument of their claim that they pay freight charges on both incoming and outgoing freight. This is said to be one of the reasons why these Provinces are so concerned about the level of freight rates and their effects on the economy.

Broadly speaking, the position taken by the Prairie Provinces (with modifications in the case of Saskatchewan) is that the economic and geographic disadvantages of the region must be accepted, but that the region should not be expected to bear the burden of national policies where the effects of such policies are unevenly distributed regionally. Transportation policy, they say, should play a neutral role, i.e. freight rates as such should not be used as a means of artificially developing an area. It is contended that the rate structure should not accentuate the long-haul charges nor in any other manner make the economic and geographic disadvantages of the area more serious.

(b) CONCLUSIONS CONCERNING DISADVANTAGES

1. The Waybill Analysis of the Board above referred to indicates that about 90% of the freight traffic originating in the Prairie territory moves on commodity rates and that the average haul per ton is 594 miles. It is probable that between 40 and 50 per cent of this traffic is accounted for by traffic moving on the statutory Crowsnest Pass Rates. Nevertheless the average haul per ton for all carload traffic originating in the Prairie territory is 611 miles, which is considerably greater than for the Central region, and is exceeded only by that of Pacific territory which is 619 miles. It can therefore be said that traffic originating in these territories is more subject to the problems connected with long-haul movements than any other in Canada.

2. The Prairie Provinces depend heavily on the primary products of agriculture and to a lesser extent on mining, forestry and fisheries, and on the processing of the products of these industries. In 1948 those engaged in agriculture numbered about 48 per cent of the gainfully occupied, and mining, forestry and fisheries engaged approximately 3 per cent of these. More than one-quarter of the employed were engaged in trade and services and about 7 per cent in manufacture (exclusive of processing, agricultural, forestry, fishery and mineral products). About 60 per cent of those employed in manufacturing were engaged in the processing of vegetables, animal, and wood and paper products, and about 21 per cent in processing iron.

The primary industries account for about 70 per cent of the net value of goods produced. There are, of course, local differences within the region, e.g. there is much greater dependence on agriculture in Saskatchewan and a relatively greater importance of manufacturing in Manitoba than in Saskatchewan or Alberta.

3. The degree of specialization in agriculture is apparent and the Prairie Provinces are dependent on foreign markets to an extraordinary degree, particularly for agricultural products (wheat, processed meats and live cattle) and

mineral products. Wheat has gone largely to Western Europe and to a lesser extent to the United States, South America, India and South Africa. The domestic market is the principal one for meat products, but exports to the United Kingdom have been considerable. With the falling off of the United Kingdom market the important market for Canadian livestock in the United States has been reopened. The United States is also the principal market for mineral products, newsprint and fish. The external domestic market (principally Central Canada and British Columbia) is an important outlet for dairy produce, feeds and minerals.

4. The mid-continental location of the Prairie Provinces implies a long rail or rail-and-water haul to the principal markets. As the export products are generally low-valued, transportation costs are of great importance to the Prairie economy. Nor is the situation relieved by carrier competition except on the Great Lakes system, which has undoubtedly been important in holding down freight charges on the long hauls to Eastern Canada. Thus, as in the case of the Maritimes, the relation of freight rates to market competition is an important problem.

Nevertheless, it should not be overlooked that the present rates on primary products moving out of Prairie territory show strong evidence of having been fashioned to meet these specific needs. Today the situation is taking a different turn, and it can be said that the maturing economies of the Prairie Provinces have become restive under a rate structure too closely adapted to an area of primary production. It is perhaps significant that the bulk of the rate complaints from the Prairie Provinces brought to the notice of the Commission were concerned with local movements within Prairie territory or inbound movements from other territories or from the United States. As to the outbound rates on primary commodities, there were few new complaints but there was evident concern to defend the existing rates which had been made the object of attack on the ground that they were no longer sufficiently remunerative. While primary production will continue for many years to be the mainstay of the Prairie economy, there is indication of increasing friction between the traditional rate structure and the drive for industrial development and economic diversification.

5. What was said concerning the Canadian customs tariff policy in respect to the Maritime Provinces applies with great force to the Prairies.

(c) PRINCIPAL REMEDIES SUGGESTED

The principal remedies suggested by the Prairie Provinces are:

1. Equalization of freight rates in all regions in Canada, with the exception of Crowsnest grain rates;
2. Closer supervision of competitive rates by the Board of Transport Commissioners;
3. Alberta's proposals for new legislation to prevent long and short haul discrimination especially with respect to transcontinental rates;
4. Saskatchewan's proposals for legislation somewhat similar to the Maritime Freight Rates Act for the three Prairie Provinces, but to apply on both inbound and outbound traffic;
5. Alberta's proposals with respect to "neutral" relationships in rates on raw materials and finished products;
6. A reorganized Board of Transport Commissioners with emphasis on a larger staff of experts; and
7. Manitoba's proposals that there should be more government control over and direction to the Board.

These matters are all dealt with separately elsewhere in this report.

3. BRITISH COLUMBIA

(a) ALLEGED DISADVANTAGES

British Columbia does not stress its geographic disadvantages. The disadvantage of the mountainous terrain is not dwelt upon, perhaps because the mountain differential was removed on July 1st, 1949. It should be noted, however, that the differential in passenger fares has not yet been removed. British Columbia argues that this element of rate discrimination should be eliminated also. Counsel for the Government of British Columbia states in his argument that "Undoubtedly the existing transportation facilities have played a large part in the development of our province, but at the same time they (the railways) have been more than repaid for such services and we trust that it will never be even suggested again that British Columbia should pay additional charges for national transportation facilities because of its mountainous terrain." Counsel mentions but does not stress the fact that many of the products of British Columbia must travel long distances to their markets in Central Canada, the United States or overseas, and, similarly, that a great proportion of the manufactured goods consumed in the province must come from distant sources. In fact, it is admitted that some industries in the province would welcome higher freight rates inbound because of the protection which they would afford to local industries. British Columbia's position respecting the geographic factors is stated by Counsel as follows:

"I might say now that in the final analysis the position which British Columbia will take on the question of geographic disadvantages is, in our opinion, that we must accept them as they are, and that all parts of Canada must accept their geographic position . . . If geographic disadvantages in other parts of Canada are to be taken into consideration, then there are geographic disadvantages on our part to which consideration should be given. But we are not asking the Commission to give any weight to them."

The chief characteristic stressed by the province is the export-import character of the economy. The basic industries—lumbering, fishing, mining and agriculture—depend on other Canadian markets and on foreign markets. It is claimed that because of the disruption of international trade, British Columbia has become more dependent than formerly on Canadian and American markets. A large proportion of the food and manufactured products comes from outside the province. The export-import character of the economy emphasizes the importance of distance and transportation costs on the long haul.

The British Columbia Lumber Manufacturers' Association submit that uniform percentage increases discriminate against long-haul traffic as compared with short-haul, and consequently disturb market patterns. The Association states that while the lumber manufacturers do not ask for special treatment because of distance to markets, nevertheless they do not want their disadvantages multiplied by horizontal percentage increases in freight rates.

Reference was made to the concentration of population in the lower Fraser Valley and on Vancouver Island and in the Okanagan and Kootenay Valleys as a result of the topography of the province and the distribution of its resources. Topography has resulted in a set-up of railway facilities which is quite different from that in the Prairie Provinces and in most of the rest of Canada. The bulk of the railway system consists of main line trackage; there are relatively few branch lines. It is stated that the only important extension of rail facilities required is into the Peace River district. A great part of the trackage runs through sparsely settled areas where little traffic originates. It is contended that trucking facilities complement rather than supplement the railway system. Long haul by truck is not common. Water transportation is very important, ocean services giving relatively cheap access to foreign markets and providing competition with

the transcontinental railway system as reflected in the transcontinental rail rates. The coastal services are also very important because many settlements along the coast are served only by water transport. Complaint was made of the inadequacy of these services and of the high fares and rates charged for them. Some of them are subsidized by the Government of Canada through the Canadian Maritime Commission.

In British Columbia topography has limited the number of possible transportation routes and of necessity the economy has developed in relationship to those routes. Difficult terrain has meant also that costs of construction and operation of highway transport are high compared with other regions.

(b) CONCLUSIONS CONCERNING DISADVANTAGES

1. The Waybill Analysis of the Board above referred to indicates that in the Pacific territory (which prior to July 1, 1949, included British Columbia and part of Alberta, but which has for rate purposes become part of the Prairie territory since the removal of the Mountain Differential on that date) approximately 88 per cent of the freight traffic moves at commodity rates and the average haul per ton is 618 miles. While approximately 60 per cent of this traffic moves 191 miles or less on the average, the revenues accruing therefrom amount to only 25 per cent of the total revenues on traffic originating in Pacific territory.

2. Like the Maritimes and the Prairie Provinces, British Columbia is an area of specialized resources and economic activity and is located long distances from its principal external markets, though the influence of distance is moderated by the availability of water transportation to overseas markets.

3. The industrial distribution of the gainfully occupied shows a heavy concentration of more than 50 per cent in the various service industries—transportation, trade, finance and other services. Manufacturing accounts for approximately 12 per cent, forestry 11 per cent, agriculture 8 per cent, mining and fishing 4 per cent and 3 per cent respectively and construction almost 8 per cent.

In terms of net value of production manufacturing is the most important industry with approximately 30 per cent of the total value of production. Forestry accounts for approximately 25 per cent, agriculture 13 per cent, and fishing, trapping and mining 17 per cent.

The relative importance of forestry, fishing, mining, and the construction and service industries is apparent. Nearly 60 per cent of the gainfully occupied are in this group of industries. It is clear that the stability of external markets is significant in the British Columbia economy, which depends on the production and export of a few primary products. The large construction and service industries are directly affected by the degree of prosperity in the primary industries.

4. A highly specialized and competitive economy has developed because of the limitation to a few very productive natural resources. Its primary products (raw, processed or semi-processed) are produced on a large scale and markets have been in industrialized countries like the United Kingdom and the United States rather than in Canada. On the other hand other parts of Canada have been the principal suppliers of imported capital and consumer goods.

5. More than 45 per cent of the new value of production of the province was exported in 1939 and more than 40 per cent in 1947 as compared with about one-third of all Canadian production. The main exports are primary and semi-processed goods—about 60 per cent are forest products, 20 per cent non-ferrous metals and fertilizers, and 10 per cent fish and fruit. The chief markets outside Canada are the United Kingdom and the United States. In recent years the former has contracted and the latter has expanded slightly. Lumber, salmon and apples have gone largely to the United Kingdom, and pulp, paper and chemical

fertilizers to the United States. Base metals have been exported to both countries. Thus, British Columbia is subject to the usual vulnerability of a Canadian primary producer selling in foreign markets and buying in a protected market.

6. Exchange difficulties and trade restrictions which have reduced and limited the United Kingdom market since the war have turned the attention of British Columbia producers to the United States and Canada. While the American customs tariff is the principal barrier to exports to the United States, transportation costs are also important as limiting access to Canadian markets in competition with other Canadian suppliers closer to them.

7. The rest of Canada, particularly Central Canada, and the United States are the chief suppliers of iron and steel, foods, textiles and clothing. The costs of rail transportation are important in this connection and explain British Columbia's concern to establish that there is water competition between the East and West coasts so that the transcontinental railway rates will not be disturbed.

8. The dependence of British Columbia on Eastern Canadian sources of supply and the growing importance of the Canadian market for the products of the area emphasize the importance of freight charges to the economy. The long haul and market competition explain the objection taken to uniform percentage increases, but in many instances the long-haul costs to the shipper have been mitigated by the existence of transcontinental rates. Water competition has led to low transcontinental rates and British Columbia insists that this competition remains a reality.

(c) THE PRINCIPAL REMEDIES SUGGESTED

The principal remedies suggested by British Columbia are:

1. The adoption of rates based more closely on the cost of service principle rather than the value of service principle;
2. Equalization;
3. Preservation of the transcontinental rates; and
4. Elimination of the Mountain Differential on passenger fares.

All of these matters are dealt with elsewhere in this Report.

4. NEWFOUNDLAND

(a) ALLEGED DISADVANTAGES

In general, the economic and geographic disadvantages of Newfoundland are similar to those of the rest of the Maritime region, though perhaps accentuated. Nevertheless it seems appropriate to make individual reference to the province because of special circumstances which are: (1) the economy is still in the process of adjusting itself to a new customs tariff area; (2) the Union with Canada took place after the appointment of this Commission, and (3) important matters dealing with the rail rate structure in Newfoundland were before the Board of Transport Commissioners during the hearings of the Commission and were decided on January 22, 1951.

Newfoundland's submissions have to do mainly with rates which are dealt with elsewhere and with facilities which are considered in this chapter.

Since over half the population lives in some 1,300 settlements scattered along the coast and in most cases is without alternative means of transportation, coastal shipping is vital. Before Union coastal service was provided by the Newfoundland Railway and is now carried on by the Canadian National Railways to whom the former Newfoundland Railway vessels were entrusted. The Cana-

dian National Railways also operates some vessels owned by the Province of Newfoundland. These services are carried on under a number of handicaps. Some of the routes are very long and difficult. Because most of the settlements lack harbours or suitable harbour facilities, cargo and mail must be transferred between ship and shore by small boats, and bad weather interferes with transfer operations. A great deal of mail including parcel post is carried, sometimes displacing more lucrative traffic. The rate paid by the Post Office is only 50 cents a ship mile regardless of the amount carried. This is the result of a pre-Union contract between the Newfoundland Railway and the Newfoundland Department of Posts and Telegraphs which was taken over by the Canadian Post Office and the Canadian National Railways without alteration. Motor boats, motor schooners, and coasting vessels offer competition to the Canadian National Railway coastal service during certain seasons of the year, but the regular coastal service is relied upon for year-round transportation of passengers and mail. Except for a few years, the service has not been profitable, and it was the policy of the Newfoundland Government prior to Union to curtail the service as deficits increased. While there has been a gradual decline in the number of boats and ports of call since 1910, ten to twelve ports of call have been added since Union and larger ships have displaced smaller ones.

Complaint is made that the service is inadequate, particularly because of overcrowding. The Province asks for additional vessels, an upward revision of the mail contracts, and the subsidization of the steamships by the Canadian Maritime Commission. The Province believes that, with the extra revenue thus acquired, the regular coastal vessels could pay their way and the service maintained or even extended. Regulation of competing vessels is not thought to be practicable or desirable.

Improvements to harbour facilities, particularly at Corner Brook, Port aux Basques and St. John's, are said to be required. The establishment of one or more national harbours is urged, and the province suggests that one of them be made a free port. The establishment of a national harbour in Newfoundland was discussed by the delegates from Newfoundland and the representatives of the Canadian Government who negotiated the Terms of Union. The Canadian Government has stated that it will, "at the request of the Province of Newfoundland, and having regard to the best interests of the province, investigate the desirability of establishing one or more harbours in the Province as 'national harbours' under the National Harbours Board." (Statement on Questions Raised by the Newfoundland Delegation (v) 11 December, 1948.)

The main line of the railway in Newfoundland runs along a semi-circular route from Port aux Basques to St. John's, a distance of 547 miles. There are approximately 160 miles of branch lines. The railway is narrow gauge and needs improvement; rolling stock is inadequate and requires modernization and replacement. Grades and curvature make for poor operating conditions and there is considerable difficulty with snow during the winter in the central (Topsails) area of the Island. The railway has shown a surplus (without allowance for depreciation or debt charges) in only five years since 1923 when it was purchased by the Newfoundland Government from a private company for \$2,000,000. The Canadian National Railways budgeted for an estimated loss of about \$4,000,000 on this line in 1950.

The railway has been instrumental in opening up and developing the interior of the province. The change in trade channels as a result of Union, the recognition for rate-making purposes on through traffic of the Port aux Basques-North Sydney water link as an all-rail service, and the application of the Maritime Freight Rates Act will increase the importance of the railway to the province. The province suggests that the railway be converted to standard gauge in order

that the system may be integrated more fully with the railways on the mainland, or, if this should prove impractical, that the service of the railway be improved by reducing grades and curvatures.

The Province is also concerned about the adequacy of the all-rail route by way of North Sydney and Port aux Basques. Only a comparatively small percentage of the non-bulk traffic imported from the United States and Canada in 1948 entered Newfoundland by the North Sydney-Port aux Basques route, but the province believes that this route will be more largely used in the future.

While improvements are being made at North Sydney, the province believes that it is physically impossible to increase greatly the capacity of Port aux Basques. Furthermore, in winter the harbour at North Sydney is likely to be icebound, sometimes for several weeks, and the rail route in Newfoundland is frequently blocked with snow. Over 200 cars were held at Truro during the winter of 1949-50 and subsequently the "blockade" extended to Halifax and Saint John, N.B. It is therefore urged that alternative all-rail routes be established including routes to Corner Brook and Bay d'Espoir (which with the construction of 80 to 90 miles of railroad would avoid the Topsails region) and that the rates by these alternative routes be no higher than the North Sydney-Port aux Basques route. It is contended that if Louisburg is to be used as an alternative winter port in Nova Scotia, the extra cost of handling over the Sydney-Louisburg Railway and the provision of facilities for handling freight and passengers at Louisburg should be absorbed by the Canadian National Railways. The province points out that if the rate questions mentioned above are to be settled in favour of the province, the present route will become even more inadequate since the water carriers will be unable to compete. The railway believes that, given time, sufficient improvement can be made to handle the traffic offered.

It is stated that the Island is poorly supplied with highways, but the submissions with respect to highways have been withdrawn as they fall within the jurisdiction of the province.

Under the Terms of Union of Newfoundland with Canada it is provided that a freight and passenger service shall be maintained between North Sydney and Port aux Basques in accordance with the traffic offered, that for the purpose of rate regulation Newfoundland shall be included in the "Select Territory" and that through traffic moving between North Sydney and Port aux Basques shall be treated as all-rail traffic, and that all legislation of the Parliament of Canada providing for special rates on traffic moving within, into or out of the Maritime region shall, as far as appropriate, be made applicable to Newfoundland. (Terms of Union of Newfoundland with Canada, Sec. 32, ss 1-3.)

(b) CONCLUSIONS CONCERNING DISADVANTAGES

1. Undoubtedly Newfoundland suffers because of its insular position, its distance from markets and source of supplies, and the time required for adjustment to the economic changes incidental to its becoming a province of Canada.

2. It is clearly established that the province depends to a great extent on the basic industries of fishing, forestry and mining with particular emphasis on fishing.

3. Its lack of agricultural land and manufactures made it necessary prior to Union with Canada to draw its food and supplies from outside sources, principally the United States and Great Britain, and now these are in the main purchased in Canada.

4. Its transportation facilities are considerably below the standards of the other provinces of Canada.

(c) THE PRINCIPAL REMEDIES SUGGESTED

The principal remedies suggested by Newfoundland were:

1. Lower freight rates;
2. Improved facilities at North Sydney and Port aux Basques including the absorption by the Canadian National Railways of the extra costs occasioned when shipping has to be diverted from North Sydney to Louisburg as sometimes occurs in the winter season;
3. Absorption by the railways of differences in handling charges due to the narrow gauge railway system, or in the alternative a uniform system of railways with that of the mainland including a railway car ferry;
4. The establishment of a "Free Port"; and
5. The construction of a military road from Gander Airport to the sea coast at Bay d'Espoir.

All of these matters are dealt with elsewhere in this report.

5. CENTRAL CANADA

As previously stated the Provinces of Ontario and Quebec did not appear in the recent freight rate increase cases and did not make any representations to this Commission although they were invited to do so.

It is to be assumed that the reason for this abstention by the central provinces is that freight rates in Central Canada are not affected by any means to the same extent as is the case in the West and the East, because Central Canadian areas are subject to the shorter haul, and in any case railway rates there are largely protected by truck competition. This central area of Canada enjoys the advantage of a great variety of resources and cheap water transport as well as extensive truck transportation. These factors have combined to make this area the most densely populated and thus the most important market area in the country, as well as the largest Canadian source of manufactured goods. Local producers have relatively shorter hauls to this market than producers at the extremities. The large market and variety of resources together have produced a highly diversified economy.

Undoubtedly the Canadian customs tariff has contributed to the economic development of this area, but, even in the absence of the tariff, it would probably have been the most populous and most industrialized part of the country.

Local producers not only have the advantage of relatively short hauls to major markets within the area but also of competing carriers.

These, however, are advantages which accrue to the area because of location in relation to markets and technical developments in transport.

Though its chief market is in the St. Lawrence Valley, as the principal producer of manufactured goods, Central Canada is faced with a long haul to markets in the East and West for some of its products. The other sections of Canada contend, however, that this is no disadvantage to Central Canada as the freight charges are borne by the purchasers in any case.

During the hearings at Toronto submissions were made to the Commission by the Canadian Manufacturers' Association, the Ship-by-Rail Association and the Canadian Industrial Traffic League. These three Associations all urged co-ordination and regulation of all forms of transport. The Ship-by-Rail Association recommends the establishment of centralized control over all transportation agencies, including trucks; the Canadian Industrial Traffic League states that railways should not be excluded from the field of air transportation and that the regulation of all civil aviation should be transferred to the Board of Transport Commissioners. They all express the opinion that the railways are satisfactorily

regulated now. The provinces outside the Central Area on the other hand have made it clear that they do not intend to surrender the provincial control of trucks and that they regard truck competition as a weapon to keep down railway freight rates.

It seems clear that the Central Provinces are satisfied with the present methods of freight rate regulation. The horizontal method of increasing freight rates appears in general to have been found satisfactory in this area. The only complaint made in this regard was that of the Algoma Steel Corporation which claims to suffer the same kind of discrimination as that asserted by Dominion Steel and Coal Corporation in Nova Scotia. The Algoma Company is located at much greater distance from the centre of the area than are its principal competitors established at Hamilton.

D. THE INCIDENCE OF FREIGHT CHARGES

Many briefs submitted in British Columbia, the Prairies, and in the Maritimes (but particularly those in the Prairie Provinces) contend that they "pay the freight both ways". That is to say that the producers in those regions bear the burden of freight charges on outgoing shipments of goods produced and the consumers in the same regions bear the burden of freight costs on incoming supplies. The argument was addressed particularly to increases in freight rates.

There was considerable argument between the railways on the one hand and the provinces on the other as to the validity of this contention.

No attempt to settle the argument would be of any avail, but a few general observations may be made:

1. Many articles are produced in regions in Canada which are distant from essential markets in Central Canada and which must meet the competition of similar articles produced in or nearer to this common market area. In such a situation the producer more distant from the market is likely to find the differential resulting from freight rate increases burdensome, especially if the increase is of the horizontal percentage type. It may mean a reduced net price or curtailment of output, or both, to the more distant producer.
2. Availability of other forms of transport may be a determining factor in the question as to the incidence of increases in freight rates. Increases in railway freight charges may under certain circumstances tend to shift traffic from the railways to their water or highway competitors, if such other media of transport are available. In some regions other forms of transport are not available, at least not to the same extent. Furthermore, some goods do not lend themselves as readily to movement by other forms of transport. In such cases increases in freight charges may be imposed more readily upon long-haul traffic than on short-haul traffic. An example of this was seen in the recent case where the railways did not apply the last increase of 4% to competitive rates because of the fear of losing traffic, mainly in Central Canada, to their truck competitors.
3. If the area is one of the type called a "deficit area", that is, if it must rely on outside sources for its supply of capital and consumer goods, the probabilities are that increases in freight charges will be passed on to the consumer in that area.
4. The impact of increases in freight rates will probably be more serious upon producers in areas that are highly specialized economically, that is, areas in which the producer cannot turn readily from one article of production to another, as is the case of the potato grower in Prince Edward Island. Producers in areas that have a widely diversified economy are in a more favourable position in this respect.

5. It is always difficult to foretell the long run effects of a freight rate increase because of the trends, "normal", inflationary or deflationary which may be prevalent, although not apparent, at the time the increase is made. If prices are rising an increase in freight rates will impose less hardship on producers than if prices are declining.
6. It is impossible to generalize as to who bears the increases in railway freight rates. The answer depends on whether there is competition or monopoly on the particular article; whether the article is sold in a surplus or in a deficit area; whether there are other media of transport which can carry the article to the market, and whether the competition between the railway and such other media is strong or weak; whether the demand for the goods is strong and exceeds the supply; whether economic conditions are depressed or buoyant; whether articles of the type involved can be conveniently or profitably handled by the competitors of the railways. In each case there may be a different answer to the question.

E. RATIO OF TRANSPORTATION CHARGES TO PRICES

It is contended that areas which produce basic commodities of low value and which are subject to long hauls to their markets suffer more from increases in freight rates than areas which produce high cost articles subject to shorter hauls.

Information supplied to the Commission establishes the following:

1. That the ratio between freight rates and prices of the goods shipped under such rates varies greatly with the goods;
2. That generally the ratio is low on high-valued goods and considerably higher on low-valued goods;
3. That the ratio, of course, changes not only with changes in freight rates but also with changes in prices of goods;
4. That for a given commodity, the ratio is higher for the long hauls than for the short hauls.

The percentage of rates to the costs of the goods shipped varies from less than 1% in the case of some manufactured products to as high as 66% in the case of straw. The rate on canned goods may be approximately 4% of the value of the goods for a haul of less than 400 miles, 15% for a haul between 400 and 1,000 miles, and more than 18% on a haul over 1,000 miles. The rate on shoes and clothing may be much less than 1% of the cost even on a haul in excess of 1,000 miles; the rate on apples for a haul of over 1,000 miles may be 25% of the cost and on steel bars over 33% and on lumber over 40%. The provinces contend that for this reason it is wrong to assume that all articles can bear the same horizontal percentage increase, regardless of the cost of the article and regardless of the length of haul.

Similarly the Saskatchewan Coal Mine Operators (while agreeing that rates should be based on what the traffic will bear, and that freight rates cannot be adjusted to relieve geographic disadvantages) argue that flat rate increases per ton on coal are unjust when applied to different grades, and contend that the increases should be based on the quality of the product and be proportionately less for longer distances. In this connection it is to be observed that the Interstate Commerce Commission in the United States did provide for a smaller increase on lignite coal than on bituminous.

F. INTER-TERRITORIAL TRAFFIC

The Waybill Analysis of the Board shows that of 2,893 carloads of traffic originating in Maritime territory on the four days covered by the study, 1,005 or nearly 35% were for destinations outside the Maritime territory and nearly all of it for Eastern territory, that is, for Ontario and Quebec.

However, in the Eastern territory, which includes the greater part of Ontario and Quebec, of the 10,400 carloads originating there, 8,390 or nearly 82% were destined for points within the area, about 9% for the Maritimes, about 7% for the Prairies and the remainder for the Pacific and Superior territories.

In the Superior territory approximately 50% of the 1,254 carloads originating there also terminate within the territory, the average haul being only 68 miles; of the remainder, 40% is destined to the Eastern territory and about 7% to the Maritimes, and 2% to the Prairies.

In the Prairie territory, of 8,993 carloads originating, approximately 1% were destined for the Maritimes, 6½% to Eastern territory, 13% to Pacific territory and 78% to Prairie territory. It must be noted, however, that a large amount of the Prairie traffic is wheat destined for Fort William, Port Arthur and the Pacific Coast, and that Fort William and Port Arthur are in the Prairie territory.

In the Pacific territory, of 1,899 carloads originating, approximately 1% were destined to the Maritimes, 12% to Eastern territory, 27% to Prairie territory and 59% to points within the Pacific area. The distribution of inter-territorial rail traffic as revealed by the Waybill Analysis tends to confirm the analyses based on other data of the economic inter-relationships of the five major territories. In summary form the inter-territorial movements show the following:

CARLOAD ALL-RAIL TRAFFIC

NUMBER OF CARLOADS

Destination Territories

Origination Territories	Maritime	Eastern	Superior	Prairie	Pacific	Total	Percent
Maritime.....	1,888	979	3	21	2	2,893	11
Eastern.....	918	8,390	171	769	152	10,400	41
Superior.....	85	489	656	24	—	1,254	5
Prairie.....	83	599	57	7,062	1,192	8,993	35
Pacific.....	19	232	12	520	1,116	1,899	8
Total.....	2,993	10,689	899	8,396	2,462	25,439	
Percent.....	12	42	3	33	10		100

From this it might be noted:

1. A close economic relationship exists between Maritime and Eastern territories, which is obviously of greater relative importance to Maritime territory than to Eastern territory.
2. There is a comparatively large interchange of traffic between Prairie and Pacific territories.
3. The high volume of intra-territorial traffic indicated in Prairie territory must be qualified by the fact that the important movement of grain and grain products to Eastern Canada for domestic use or export has been classified as an intra-Prairie movement as previously explained.

4. Local traffic within Ontario and Quebec far outweighs the inter-territorial traffic to and from this territory. This would appear to indicate a high degree of self-sufficiency in this territory vis-a-vis the rest of Canada.

G. IMPORTANCE OF COMMODITY GROUPS

The Waybill Analysis divides all the traffic into five main groups and the figures indicate that:

Agricultural products comprise approximately 23% of all traffic; animals and animal products 5%; forest products 13%; mine products 27%, and manufactures and miscellaneous 31%.

H. LENGTH OF HAUL BY COMMODITY GROUPS

The Waybill Analysis indicates the average haul per ton of the various commodities that comprise the groups indicated under Heading G above. The figures indicate the following:

1. For agricultural products as a whole the average haul for all Canada is 751 miles, and 92% of the carloads is accounted for by commodity groups having an average haul of over 650 miles;
2. For animals and animal products the average haul is 662 miles and 75% of the carloads is in commodity groups with average hauls of over 500 miles;
3. For forest products the average haul is 396 miles but about 40% is in one commodity group with an average haul of 660 miles;
4. For mine products the average haul is only 227 miles, although bituminous coal, the most important commodity in this group, comprising 30% of the carloads, moved 386 miles on the average; and
5. For the manufactures and miscellaneous items the average haul is 456 miles, but 43% of the carloads was in groups averaging less than 345 miles and 30% in groups averaging less than 275 miles.

It will be observed that agricultural products are subject to the longest average haul.

The Waybill Analysis has been dealt with at some length because of the danger of placing too much emphasis on a sample which is little better than 1% of the total, even though representative dates were selected. Nevertheless it must be fairly indicative of the points raised under headings E, F, G and H. Information of this nature will surely be of much use to the Board, to the railways and to shippers in future cases before the Board, and will make for a better understanding of the mutual problems of all parties concerned. Consideration should be given to the question of continuing the practice of making such waybill studies by the Board.

I. SUMMARY OF FINAL POSITION TAKEN BY PROVINCES

It is apparent from what occurred at the hearings of the Commission that the position of the seven provinces has altered considerably since they appeared before the Cabinet in July of 1948. At that time they felt that the powers of the Board should be greatly enlarged to enable it to deal with economic and geographic disadvantages. But on the contrary the submissions proposed to the Commission tended rather to limit the effective rate-making powers of the

Board; for instance, to give greater control of the Board to the Government, to have Parliament provide subsidies to bring about equalization, to extend the application of the Maritime Freight Rates Act, etc.

In fact, the following may fairly be stated to be the ultimate position taken by these eight provinces with respect to economic, geographic and other disadvantages in regard to transportation:

1. British Columbia, Alberta and Manitoba are willing to accept the consequences of their natural disadvantages (and expect to retain any natural advantages) provided there is no discrimination in treatment between regions, and provided the disadvantages are not accentuated by artificial factors, such as national policies and particularly railway policies.

2. The Province of Saskatchewan takes the position that its economic, geographic and other disadvantages cannot be overcome by readjustment of the freight rate structure or by giving additional powers to the Board, but rather that Parliament should order a 20% reduction in all rates (excepting the Crow's-nest Pass Rates) in Prairie territory and pay the difference as a subsidy to the railways.

3. The Provinces of New Brunswick and Prince Edward Island apparently feel that regulation by the Board is not the answer to their disadvantages, but rather that the answer lies in further reductions under, and extension of, the Maritime Freight Rates Act.

4. The Province of Nova Scotia likewise feels that the granting of further powers to the Board is not the answer to the problems raised by its disadvantages, but that the answer lies in compelling the Board by statute to retain rate relationships as they existed prior to April 8, 1948 (i.e. before the application of the first post-war horizontal increase in rates).

5. The Province of Newfoundland did not lay any stress whatever on the regulation of rates by the Board or the giving of additional powers to the Board. The position of the Province was stated by its counsel as follows: The railway has "imposed a freight tariff in excess of the Maritime rate and justifies it on the ground that it is appropriate to Newfoundland because of the conditions of transportation. If this question is once resolved in favour of the interests who are contending that the Maritime rates apply here, then the question of freight rates generally will be solved in so far as Newfoundland is concerned. In other words we would all be satisfied if we were given the benefit of the Maritime rates including the Town Tariff, which is not now in effect in Newfoundland." The settlement of the rate problem on that basis, plus the provision of better facilities, is the main case for the new Province as put before the Commission. The decision of the Board on January 22, 1951, seems therefore to have resolved its main difficulties.

6. All eight provinces adopted as a final position that the Board should not be an "economic planning board".

J. GENERAL CONCLUSIONS

In essence the main cause of complaint is that the outlying provinces suffer a disadvantage because of the long distances which separate them from their sources of supply and also from their markets—long-haul traffic, in some cases on primary commodities of low value, subjected to horizontal increases in rates.

All these provinces ask for lower freight rates although they suggest different methods of approach to this objective. The Prairie Provinces and British Columbia favour the equalization method; in addition to this Saskatchewan proposes a scheme of subsidies. The Maritime Provinces ask for reductions under the Maritime Freight Rates Act or for extensions of that Act.

Whatever the method of approach may be, however, it is in each case an attempt by shippers and consignees to secure relief from the disadvantages attributed to increases in rates by the horizontal percentage method, and at the same time to retain any existing advantages in rates which they now enjoy. The Maritime Provinces wish to retain the advantages of the Maritime Freight Rates Act and the Prairie Provinces wish to retain the Crowsnest Pass Rates on grain and flour. British Columbia asks for the continuance of the transcontinental rates.

The railways on the other hand are anxious to preserve the horizontal method of rate increases because of its simplicity of application, because they fear that they cannot raise adequate revenue without it by reason of truck competition in Central Canada, and because they enjoy a quasi-monopoly on long-haul traffic.

It is between these two viewpoints that the clash occurs.

The Board has held that it has no power to equalize geographic, economic or climatic conditions. This is the position taken by the Interstate Commerce Commission in the United States. There is, however, one notable distinction between the situation in the United States and in Canada. This was pointed out by the railways themselves. It is this: Canada is served almost exclusively by two great transcontinental railroad systems, whereas the United States is served by several hundred regional railways. In the United States it is in the interest of each of the many railways to promote the business of producers on its line who are competitors with the producers on other lines running into the common market. In the language of counsel for the Canadian Pacific:

"The situation in Canada is quite different. The two main railway systems usually serve all of the various areas. It is therefore not to the same extent in their interest to say that one area more distant than another is entitled to compete with the producing areas closer to the market, nor is it necessary to obtain traffic for its line that it should ensure that the more distant producer gets into the market at no greater increase in rates than the nearer producer. In these circumstances the Canadian railways have not themselves promoted the idea of exceptions to horizontal percentage increases. The situation is quite different in the United States."

The situation thus created is disadvantageous for Canadian shippers and localities when compared with those of the United States. It means that short regional lines are more beneficial to the communities which they serve than are our two great systems, which do not feel called upon "to promote the idea of exceptions to horizontal percentage increases," because their "region" is the whole country within which they act, in this respect, non-competitively since they unite in asking for the same horizontal increases.

It is true, of course, that in considering this question, the great difference in fundamental conditions between Canada and the United States must be taken into account. The Canadian shippers and consignees who complain of the effect of horizontal percentage increases are (1) producers who are situated at a great distance from the markets they seek to reach and (2) consumers who are far removed from their sources of supply; and in some cases the same person or corporation may be both a producer and a consumer. Producers and consumers in the United States with its large population have the advantage of a great number of widely distributed market and supply centres. The long haul is less in evidence there than in Canada. In this country, on the other hand, it is noticeable to what extent Central Canada, that is the eastern portion of Ontario and the western portion of Quebec, has become both the market centre and the supply centre for the rest of the country. Hence the long haul and the adverse effect of horizontal increases applied without abatement over the full length of that haul. Hence also the inevitable result of the continuance of this flat horizontal increase

policy: (1) a greater and greater concentration of industry in Eastern Canada (because freight rates are one of the factors in such cases), and (2) consistently rising prices for goods shipped to consumers in distant regions.

In attenuation of the disadvantageous position of Canadian producers and consumers outside Central Canada the following facts are pointed out:

First, "American freight rates since 1946 have been advanced by an average of 60 per cent, while Canadian rates have been advanced by an average of 42 per cent."

But whatever advantage this lesser average increase may have brought to Canadians in general, this statement of it does not dispose of the complaint of discrimination within Canada resulting from horizontal increases.

Second, "Canadian rates on some important articles of transportation were tapered off by the railways much more rapidly in relation to distance than corresponding American long-haul rates and it may thus be said that they already had 'maxima' incorporated into them when they were fixed."

Here again, while the original tapering may have been applied generously, the horizontal increase upon those tapered rates has the same discriminatory effect as in the case of all other rates. If these increases had themselves been "tapered," that is, limited by the application of maxima as will be explained later, the situation would have been more satisfactory.

This last statement appears to point out the problem seeking solution. The position of shippers and consignees in the regions of Canada outside the Central region is bound to deteriorate with the continued application from time to time of rate increases which by their nature must become more and more burdensome as they spread out from the shorter to the longer distances. Since tapering was found to be fair and feasible in setting the original rates on certain important articles of transportation, it would seem to follow that, to some extent at least, increases in those rates ought to have been tempered by a similar process. The railways should be able to plan and should have planned their revenue applications accordingly.

It appears therefore that the answer to the question raised lies mainly with the railways themselves, since the means of removing the cause of dissatisfaction is within their own initiative. It has been pointed out to the Commission that in this regard railway management in the past has often proceeded, in fixing freight rates, without sufficiently considering the interest of the community to be served, and without even showing a proper conception of the long-run interest of the railway.

There is no better evidence of the disturbed feeling in the country caused by the nature of the present freight rate structure than the fact that the seven provincial governments have united to complain of it; while on the other hand the two central provinces raised no protest whatever. There is no such thing as a freight rate grievance in Central Canada to arouse the people of that area as the people of the West and the Maritimes have been aroused.

The seven provincial governments were not the only ones to take notice of the general discontent prevalent in many parts of Canada.

In the summer and autumn of 1948 the two major Canadian political parties held conventions in Ottawa. In each case responsible delegates from the whole of Canada were present. These conventions likewise took notice of the discontent prevailing in many parts of the country over the freight rate situation and called for the holding of an investigation. At the Liberal Party's Convention, which

took place in August, 1948, a resolution was adopted unanimously, the beginning of which is as follows:

"The Liberal Party recognizes that transportation has been a major economic problem of Canada. The overhead cost of linking East and West together has been a national concern from the earliest days. While great material achievements have been made, changes in operating costs and new methods of transportation are continually affecting the situation. The Liberal Party stands for:

'(1) The maintenance of the integrity of the Canadian National Railways and the Trans-Canada Air Lines as publicly-owned and publicly-controlled services;

'(2) The appointment of a royal commission thoroughly to review and investigate the whole Canadian transportation rate problem other than (a) the prescriptions contained in the proviso to subsection five of Section 325 of the Railway Act and in the Maritime Freight Rates Act, and (b) the application now pending before the Transport Board for a removal of the mountain differentials in order amongst other things (i) to prepare recommendations for an improved uniform basic rate structure for Canada, and as to accounting problems in so far as they affect uniformity of accounts, and the segregation of railway assets from non-railway assets and their incidence on fixed charges, dividends and other income, and (ii) to consider and report upon the principles and finding of facts upon which the recent order of the Transport Board for a twenty-one per cent increase in freight rates was based, etc.'"

In October, 1948, the Progressive Conservative Party in convention adopted the following resolution:

"To Remove Freight Discrimination

"The Progressive Conservative Party supports an investigation of freight rates, particularly in the relation to discrimination between the several geographical areas of the Dominion.

"Our view is that the national policy requires that the several geographic divisions of this country shall share the benefits of and assume responsibility for a transportation system which will permit every part of this country to enjoy the benefits of our national and industrial resources without discrimination."

Among those who complain of existing conditions, nobody expects distance to be obliterated; nobody asks for a pooling of freight charges. It is fully recognized that those farther away must pay more than those nearer at hand. It is the relative position in which the parties are left by the present method of applying increases in freight rates that arouses the protest of unjust discrimination.

It would be most unfortunate for all concerned if the freight rate controversies of the last few years were to go on and on without end. These controversies have led to great expenditures of time and money, to expensive delays in the making of rate adjustments, and to the maintenance of an unhealthy feeling of unjust treatment in large sections of the country's population. There is no reason why, with judicious management, the relations between the railways and the people they serve might not be as friendly in the East and in the West as they are in Central Canada. The people of outlying regions should no longer find themselves in the position they have been in so far where, as appears from a study of the proceedings in the 21% Case, they stand between a Board which has to say that it has no information upon which it can order anything other than a flat percentage increase, and the railways, who, although they should possess all the necessary information for a reasonable planning of a fairly distributed increase (as is shown by the manner of their own rate adjusting), seem to be unable to do anything about it. The reforms recommended in the Chapter on "Accounting and Statistics" will no doubt prove helpful in this regard. The whole subject of horizontal increases is dealt with in another chapter.

Other measures which will prove helpful, if adopted, to the alleviation of the disadvantages of distance are those recommended in the Chapters on "Equalization", on "The Rail Link between East and West" and in various other chapters of this report.

Fortunately there is now an occasion at hand which justifies hope for the setting up of a better all-round state of things than now exists. This reference is to the general freight rates investigation which the Board is conducting. The policy on which the Government bases its commitment to the Board under Order in Council 1487 is there set out as being:

"The establishment of a fair and reasonable rates structure . . . so as to permit the freest possible interchange of commodities between the various provinces and territories of Canada, etc."

The outstanding complaint today is that the present rates structure, especially since the application of the recent 45% increase, does not provide this "freest possible interchange of commodities".

* * *

The following three chapters deal in the main, although not exclusively, with matters arising out of paragraph 2(b) of Order in Council P.C. 6033, which reads as follows:

"(b) Review the Railway Act with respect to such matters as guidance to the Board in general freight rate revisions, competitive rates, international rates, etc., and recommend such amendments therein as may appear to them to be advisable."

CHAPTER II

QUESTIONS ARISING OUT OF REVENUE CASES

1. HORIZONTAL INCREASES

The method of applying a uniform percentage increase to all rates is known as the "Horizontal Percentage Increase."

The seven provinces which opposed the 30 per cent and 20 per cent increase applications before the Board from 1946 to 1950 and attacked the horizontal increase method continued their attack before this Commission. Many submissions were made criticizing this method and asserting that it works great hardship upon shippers in the provinces subject to long haul on their traffic.

EXAMPLES OF THE EFFECT OF HORIZONTAL INCREASES

In order that the real grievance of the long haul shipper or consignee may be better understood, it should be pointed out that the disturbed relationship complained of is the actual money, (not the rate relationship), which is considered unfair. For instance, two shippers or consignees have, before the increase, a money difference between them of \$10 brought about in this way:

Long haul shipper pays \$20;

Short haul shipper pays \$10.

Both shippers having their rates increased by 50 per cent, the following money relationship is established:

The \$20 shipper now pays \$30;

The \$10 shipper now pays \$15.

The difference between them after the increases is \$15 instead of \$10 as previously.

Practical illustrations can be drawn from different classes and different scales, e.g.:

5th Class traffic on Eastern "Schedule A" Scale

Former rate for 170 miles	32 cents
Apply increases of 21% and 20% (compounded) and this rate becomes	47 cents
Former rate for 750 miles	63 cents
Apply increases of 21% and 20% (compounded) and this rate becomes	91 cents
Rate difference before increase	31 cents
Rate difference after increase	44 cents

In addition to the complaint that there is too great a burden cast upon the long-haul shipper as compared with the short-haul shipper there is also the complaint that since rates are higher in the West than in the East the horizontal increase method further accentuates the disparity, e.g.:

5th Class traffic on the Western Distributing Scale

Former rate for 170 miles	36 cents
Apply increases of 21% and 20% (compounded) and this rate becomes	53 cents
Former rate for 750 miles	93 cents
Apply increases of 21% and 20% (compounded) and this rate becomes	136 cents
Rate difference before increase	57 cents
Rate difference after increase	83 cents

THE RAILWAYS' SUBMISSIONS

The views of the Canadian National Railways are summed up in their submission as follows:

"The Canadian National considers that a horizontal increase is the only satisfactory method of dealing with general increase cases and of distributing the burden equitably. This general statement must admit of exceptions as in the case of competitive rates and rates on certain specific commodities."

The Canadian Pacific Railway Company in its submission dealt with the matter at considerable length, but their views on the subject may be summarized as follows:

1. While admitting that there have been a number of exceptions in the application of percentage increases in the United States, the situation is different there where there are a large number of small railways whose interest lies in inducing new industries to locate on their lines;
2. Allegations made against horizontal increases do not take into account general increases in wholesale prices;
3. It is only by percentage increases that the competitive relationships between various producers can be maintained;
4. Alternative methods favour the more distant producer;
5. Exceptional cases should be adjusted on complaint at a subsequent hearing; and
6. Uniform percentage increases are the only rational answer because wholesale prices constitute the major reason for changing rates.

The Canadian Pacific dealt fully with the subject both by expert evidence and in argument of Counsel and claimed (a) that no legislative changes were required; (b) that the Board had full power to deal with the matter, and (c) that the Commission should make no recommendation with respect to horizontal increases.

COMPLAINTS OF THE PROVINCES AND OTHERS

The complaints about the horizontal increase method were many and varied, but may be summarized as follows:

That the application of rate increases by the horizontal increase method:

1. Disturbs existing "relationships";
2. Accentuates existing disparities;
3. Aggravates the disadvantage already suffered by long haul shippers;
4. Destroys existing "differentials";
5. Assumes that all traffic can bear the same percentage increase when this is not the case; and
6. Worsens the competitive position of manufacturers subject to long haul, especially when they have to bring materials in for fabrication. Many suggestions were made as to alternative methods. Among them were:
 - (a) That the amount of the increase should vary with the quality of the product and that it should be less for longer distances;
 - (b) That the horizontal method should only be applied if some limit is placed on the amount of the increase for "long hauls"; *Operates under*
 - (c) That the Board should limit the increases by the application of maxima in cents per 100 pounds;
 - (d) That horizontal increases should not be permitted, and that the prohibition should be by statute;

- (e) That the Board should provide for lower percentage increases on long haul traffic; and
- (f) That all horizontal increases should be subject to the application of flat maxima on long haul and low valued traffic.

TREATMENT OF THE SUBJECT BY THE DUNCAN COMMISSION

The following excerpts from the report of the Duncan Commission seem to indicate the importance of this subject.

In the report which was made in September 1926 appear the following statements:

"Incidence of 'Horizontal' War Increases"

"There is one further very important feature of the railway situation, as it affects the Maritimes, which calls for special mention. In one sense it is connected with the problems that we have been discussing, but its immediate incidence is not so interconnected with the general problem as to make it impossible to deal with it separately. Indeed the reaction of the burden which it imposes is so great that, in our view, it should be dealt with as a special problem. We refer to the system under which, during the late war, flat percentage increases (known as 'horizontal increases') were added to railway rates."

The report sets out a table showing rates on iron and steel articles from Trenton, N.S., and Hamilton, Ont., to various points in Ontario, and shows the results of the application of percentage increases to the rates, which, though similar in percentage, are vastly different in dollars per gross ton, e.g. \$5.60 from Trenton, N.S., compared with \$1.79 from Hamilton to Georgetown, Ont.

The report then states:

"By the mere operation of railway increases—and having no relation to any other business considerations—the burden which a Trenton plant has to meet now as compared with a Hamilton plant is much greater in money than it was formerly.

The railway administration, in giving evidence before us, agreed that long-distance traffic, particularly heavy traffic, had been seriously prejudiced by the operation of the horizontal increase. It was, they said, their opinion that even on the present level of class rates, and considering expenses, the higher class goods are not carrying their full share of the expense of operations. They had made the suggestion to the Board of Railway Commissioners some two years ago—at a time when a reduction in class rates was being considered—that instead of reducing the class rates they should select what was considered basic commodities, such as grain, forest products, coal, iron and steel. The Railway Board, we were informed by the railway administration, felt themselves prevented from working out the proposition in that way, since when the advances were made they were made horizontally, and some declaration had been made at the time that when reductions came they also would be made horizontally.

In view of the importance of railway rates to long-distance and heavy traffic, we have no hesitation in recommending that the matter should be taken into fresh consideration by the Railway Commission, that they should be relieved from the necessity of regarding themselves as bound by any such declaration as is referred to, but should be free to consider the whole question on its merits."

Attention must be given to these statements because one of the witnesses appearing before this Commission stated that, although the Duncan Commission and the railways themselves (as stated to the Duncan Commission) had acknowledged that horizontal increases are sometimes unsound, neither the railways nor the Board of Transport Commissioners has done anything about it.

THE CANADIAN EXPERIENCE

Since the Board was created in 1903 (and came into being in 1904) it has handed down several decisions dealing with rates generally—that is as distinguished from cases affecting only particular rates. Most of these may be and generally are referred to as “Revenue Cases”.

1. In 1905 the Board ordered a general revision of class and commodity rates on all export traffic in Eastern Canada to the Atlantic seaboard. This may be called a “Reduction” Case.
2. In 1907 the Board, in the “International Rates Case” ordered a general reduction of the “Town Tariff” class rates in Eastern Canada, effective January 1, 1908.
3. In 1914 the Board, in the “Western Rates Case”, ordered a reduction of approximately 10% in class and commodity rates in Western Canada.
4. In 1916 in the “Eastern Rates Case”, the Board authorized increases in rates in the East, generally estimated to amount to a 5% increase. This may be called the first “Increase Case”.
5. In 1918 in the case of “In re Increase in Passenger and Freight Tolls”, the Board authorized a general increase in rates across Canada—approximately 15%.
6. In 1918 in the “25% Increase Case”, pursuant to a report from the Board to the Government and an Order in Council passed under the War Measures Act, rates were increased generally throughout Canada by 25%.
7. In 1920 in the “40% Increase Case”, the Board authorized increases of approximately 40% in the East and 35% in the West to be effective only until December 31, 1920, and on January 1, 1921, the increases were to be 35% in the East and 30% in the West.
8. In 1922 in the “7½% Reduction Case”, the Board ordered a reduction of 7½% on certain basic commodities.
9. In 1927, pursuant to the General Freight Rates Investigation, ordered by the Government in 1925, the Board ordered some reductions in distributing class rates in the West, and in export rates from Toronto and West to Quebec, and on rates on grain and grain products.

Following World War II the railways made applications for increases in rates of 30% and 20%; these two applications were dealt with in four decisions resulting in four increases.

10. In (a) an increase of 21% (1948).
11. (b) a further increase of 8% (1949).
12. (c) a further increase changing the 8% granted in 1949 to 16% (1950).
13. (d) a further increase changing the 16% granted in 1950 to 20% (1950).

So that the 30% application brought about a 21% increase and the 20% application brought about a 20% increase.

For the purpose of considering the question of “Horizontal Increases”, it is important to examine only what the Board has done in the Increase cases.

The increases have taken place as a result of the following decisions:

- I. The Eastern Rates Case in 1916.....No. 4 above.
- II. The 15% Case in 1918.....No. 5 above.
- III. The 25% Case in 1918.....No. 6 above.
- IV. The 40% Case in 1920.....No. 7 above.
- V. The 21% Case in 1948.....No. 10 above.

- VI. The 8% Case in 1949.....No. 11 above.
- VII. The 16% Case in 1950.....No. 12 above.
- VIII. The 20% Case in 1950.....No. 13 above.

In the above eight cases the following points should be noted:

I. *In the Eastern Rates Case in 1916* the increases were *not* made by the "Horizontal Percentage Increase" method; the Board dealt with many individual items in the tariff and said, "Some articles may reasonably stand a greater lift in the schedules than others; on the other hand, the advances asked for in some items may be deemed too great, or even inadmissible. *Each item of the application must therefore be considered on its merits.*"

The Board proceeded to do so at great length and almost all of the increases granted were in cents per 100 pounds.

II. *In the 15% Increase Case in 1918*, which seems to be the first application for a straight 15% increase, the Board allowed it subject to several important exceptions:

1. In the case of all-rail movement from the east to the west where an increase of 15% was allowed in respect to the territory west of Port Arthur, but the increase was held down to 10% on the eastern balance of the through rate.
2. In the case of coal and coke, a flat increase not exceeding 15¢ per ton. The Board said: "This flat advance on the *long hauls* will, of course, be a great deal less than a percentage increase of 15%; but on the other hand, on the shorter hauls, it will be larger than the 15% increase would be. The flat rate will, however, bear less harmfully on the consumers generally."

It should be pointed out, however, that the Board acted on its own initiative in changing the railways' request for a 15% increase to a flat increase of 15 cents per ton. It would appear that the Board was acting in the public interest in doing so, rather than in the interest of long-haul consumers when it added these words:

"The necessity of this 15-cent increase *on a commodity of urgent necessity to the public* is much to be regretted. It is, however, inevitable. In order to increase railway revenues to an appreciable extent commodities constituting a large share of the tonnage carried must bear an appreciable share of increased rates."

3. Common clay and sand, gravel and crushed stone: increases "not more than 5¢ per ton."
4. Lumber rates: the Board refused to apply either a horizontal percentage increase or a flat increase in cents per hundred pounds, but applied different increases on rates to different destinations, varying from 3¢ to 5¢ per 100 pounds, and a straight 15% in others; all to maintain "rate differences" and to put the lumber rates "upon a more scientific basis than it has been in the past".
5. Transcontinental class rates: increase of 10%.
6. Transcontinental commodity rates: "I would not at the present advance . . . unless these rates are advanced in conformity with advances made by the American lines."
7. In the Pacific Territory "an increase of only 10% should be allowed, but, of course, no rates to be lower than the prairie rates as increased".
8. No increase on tolls and tariffs applicable to switching, weighing, demurrage, refrigeration, heated car service, storage or other special services.

III. *The 25% Case in 1918:* In this case the increase arose out of the increase in wages in Canada resulting from a similar wage increase in the United States following upon the McAdoo Award.

The Board in its report to the Government on July 25, 1918, pointed out that the McAdoo Award "is popularly supposed to increase rates 25%", but "that in a large number of instances, owing to maximum advance limitations and to a flat rate increase, which, while advancing in a higher percentage the rate for shorter mileages, holds down all longer movements, the increase of 25% is not obtained".

The Board's report dealt in Sections 1 to 20 with the territory east of Fort William and in Sections 21 to 37 with the territory west of Fort William, and in Sections 38 to 44 with such matters as rates between Eastern and Western Canada, export and import rates, differentials, etc.

In the result, class rates in the East were increased by 25%; and although they were also increased in the West by 25%, the increase in the West by 25% was applied to the rates in existence prior to the 15% increase case above referred to and the prior increase was cancelled.

In the case of commodity rates a 25% increase was granted both in the East and West, but in the same manner as in the increase on class rates, i.e. in the West the increase granted in the 15% case was cancelled and the 25% increase applied only to the rates in existence prior to the date of the 15% case.

There were, however, a large number of exceptions to the horizontal increase:

1. *In the East.* On coal and coke the increases were in cents per 2,000 pounds, depending on the amount of the existing rate, e.g. on rates up to 49¢ the increase was 15¢; on rates from 50¢ to 99¢ the increase was 20¢. (These increases also differed as between coal and coke.)

2. On stone, sand, gravel, brick, lime, plaster, cement, the increases were in cents per 100 pounds, e.g. sand and gravel, 1¢; lime and plaster, 1½¢; cement, 2¢.

3. Lumber increased by 1¢ per 100 pounds added to the tariff before the 15% Case, then increased 25%, subject to maximum of 5¢ per 100 pounds, and the increases granted in the 15% Case cancelled.

4. Pulpwood: increased 25%, not exceeding 5¢ per 100 pounds.

5. Cordwood, slabs, etc.: 1¢ per 100 pounds.

6. Wheat: striking out the 2¢ increase granted in the 15% Case and adding 25%, not to exceed 6¢ per 100 pounds.

7. Grain, flour, milled products: same as wheat.

8. Livestock: 25%, not exceeding 7¢ per 100 pounds.

In the West. There were somewhat similar exceptions on:

1. Coal and coke.

2. Certain oils.

3. Stone, sand, gravel, brick, cement, lime.

4. Lumber.

5. Grain and grain products.

6. Livestock.

The important thing to observe is that the Board in its report did consider numerous items in the tariff and granted substantial exceptions.

IV. *The 40% Increase Case in 1920.* In this case the Board allowed a 40% increase in the East and a 35% increase in the West to continue only until December 31, 1920, and on January 1, 1921, the increase was to be 35% in the East and 30% in the West.

There is one important observation by the Board which it is desirable to set out in full:

"In some industries the amount of increases in the rates themselves, is a consideration secondary to the preservation of the rate relationships from the points of production. For example: the maintenance of the existing spreads between the rates from the various mills in British Columbia was urged at the hearing by the lumber interests of the province. *While the principle of percentage increases must necessarily disrupt these relationships to some extent, it is considered important that in the working out of the tariffs such recognized differentials as have been referred to should be preserved so far as may be practicable, even though certain rates may result which are lower or higher than they would otherwise be.*"

In granting the increase, the Board also made four important exceptions to the general increase:

1. No increase was permitted on sand, gravel, and crushed stone;
2. Increases on coal were limited to 10 cents, 15 cents or 20 cents per ton depending on the current rates;
3. The increase on cordwood, slabs, edgings and mill refuse was limited to 10%; and
4. No increase was permitted on milk rates.

V. *The 21% Case (March 30, 1948).* The Board's decision dealt almost entirely with the revenue requirements of the railways, and apart from coal and coke, and grain and grain products did not deal with specific commodities.

In the case of coal and coke a flat increase of 25¢ per ton was authorized regardless of existing rates.

In the case of domestic grain and grain products between points in Western Canada, and feed grain rates, the Board said "to increase these rates with no increase in the others (grain rates to the head of the lakes, etc.) would create a spread in the rates which it is considered would be unreasonable".

On the question of Horizontal Increases the Board had this to say:

"Strong exception was taken by the respondents to the granting of a straight percentage increase in freight rates. But, as I view the matter, this is the only workable and practical method of dealing with the question in order to provide the additional revenue required by the railways.

There were submissions that if increased rates were authorized there should be varying percentages of increase, the lowest percentage of increase being made on long hauls and the highest percentage of increase on short hauls; it was also suggested that maximum increases should be provided in order to avoid a very large increase upon relatively high rates from distant points of production to important markets. One difficulty with respect to the adoption of a varying or maximum increase is apparent, namely the lack of reliable traffic statistics from which to determine the additional revenue which would accrue from flat or maximum increases on particular commodities. Further there is not on record anything to enable any determination concerning the commodities and sections of the country and even the individual rates which could best bear the burden of an increase."

The inference here is that the Board would have considered the adoption of a method other than the horizontal method if it had had the necessary information before it.

In effect then the only exception to the Horizontal Increase was on coal and coke.

V1. *The 8% Case (September 20, 1949).* Again this judgment dealt almost exclusively with the railways' revenue requirements, and not with rates on specific commodities.

An 8% horizontal increase was authorized.

Coal and coke were excepted and subjected to an increase of 8 cents per ton. In dealing with Horizontal Increases the Board said:

"At this time the Board is not in a position to give a final determination in respect to this contention because this matter is already the subject of a direction to this Board set out in Order in Council P.C. 1487 of April 7, 1948, in which Order in Council the Board was directed to make a thorough investigation of the rates structure of railways and railway companies which are under the jurisdiction of Parliament, with a view to the establishment of a fair and reasonable rates structure which will under substantially similar circumstances and conditions be equal in its application to all persons and localities subject to such special statutory provisions as affect freight rates."

VII. *The 16% Case (March 1, 1950)*. This case cancelled the 8% increase authorized in the September 20, 1949, decision, and authorized a 16% Horizontal Increase.

The 8¢ per ton increase in coal and coke rates was increased to 16 cents.

The decision dealt almost entirely with the subject of railway revenue requirements, and the only reference to the question of Horizontal Increases is that contained in the decision of Commissioner MacPherson, who said:

"I concur in the Judgment of the Assistant Chief Commissioner although I would prefer to see some relief given by way of maximum increases on basic materials where the markets are long distances from the source of supply. I realize, however, that the Board cannot deal with the over-all revenue requirements and limit the increase in certain cases. To do so would entail a much more complete study of individual types of traffic than the Board is able to do at the present time. I also realize that the same revenue requirements would necessitate placing a higher burden on other traffic if maximums were to be prescribed.

"There is, however, an opportunity to consider this feature in the General Freight Rate Investigation. Furthermore, it is the privilege of anyone at any time to lodge a complaint with the Board as to any specific rate considered to be unreasonable or unjustly discriminatory. I would also think that the railways will, in their own interests, give careful consideration to any pleas for relief if such are made."

VIII. *The 20% Case (May 11, 1950)*. This case simply increased the 16% authorized in the March 1, 1950, decision to 20% but did not increase the rates on coal and coke.

No specific rates were dealt with.

Nothing was said concerning the horizontal percentage method of increasing rates.

It will therefore be observed:

1. That during and following World War I and following World War II substantial increases in rates were made;
2. That, although in the early cases a substantial number of exceptions were made, and the same practice was adopted as that followed by the Interstate Commerce Commission, a different method was pursued in the later cases where the only exception to the horizontal increase was the flat increase made in regard to coal and coke;
3. That following World War II the Board seems to have treated the applications purely from the revenue point of view and without considering the ability of different commodities to bear the increases; and
4. That the chief reason for the Board's failure to depart from an almost rigid adherence to horizontal percentage increases is, on its own statement, that, in the cases before it, it did not have the necessary information. This is a situation which calls for reform, and it is to be noted from the quotations made that the Board seems to be about to institute this reform.

THE PRACTICE IN THE UNITED STATES AS INDICATED BY THE DECISIONS
OF THE INTERSTATE COMMERCE COMMISSION

In Ex Parte 115 (208 I.C.C. 4) in 1935 the rail carriers applied for a 10% increase subject to maxima in certain cases, and exceptions in others. The Commission in its decision referred to the railways' departure from the uniform percentage plan. It is noteworthy that the application of maxima was on rates on products of agriculture, animals and animal products, products of mines, forests and various manufactured articles and miscellaneous items. The general application was denied, but permission was granted the railways to establish certain specified increases in rates and charges, some on a horizontal basis subject to maxima, until June 30, 1936, in view of the emergency then confronting the railroads.

In Ex Parte 123 (226 I.C.C. 41) in 1938 the rail carriers sought to increase all existing rates subject to certain exceptions. The Commission referred to the diversity of views with which they had "long been familiar", between the long haul shipper, who fears that a percentage increase will drive him out of business and who accordingly asks for a stated or flat increase, and the short distance competitor, who demands the benefit of his location and insists that the only equitable basis is one which imposes increased costs ratably with increased distance of movement. The Commission stated that there were objections to rates made on extended mileage scales with inflated gradations and including differentials resulting in the long haul shipper suffering most severely and the advantages of the short haul competitor being increased.

The Commission stated that the present attempt by the railroads to allocate the necessary increased revenue in flat amounts to be added to existing rates would be hazardous in its possible revenue results and would unduly ignore the element of distance as a measure of costs.

It also found that it would be unjust and unreasonable to impose upon certain recognized groups of commodities, namely products of agriculture and forests and certain products of mines, the same full basis of increase in rates as upon remaining commodities and accordingly applied a lesser amount of increase upon such commodities. It accordingly granted a 10% increase except upon products of agriculture, and upon animal products on which a 5% increase was granted. Flat increases of cents per 100 pounds were granted on anthracite; no increases were granted on bituminous coal, coke, iron ore, etc. Commissioner Lee said:

"Percentage changes disrupt relationships and disturb business. The long haul shipper suffers and the advantage of the short haul shipper is increased where increases are based on percentages."

In Ex Parte 162 (264 I.C.C. 695) in May 1946, the Class I railroads filed a petition for a 25% increase subject to important exceptions as a result of a 16¢ per hour wage increase, increased costs of material prices and a decline in traffic and revenue.

The railways suggested the application of maxima on products of agriculture, and graduated increases ranging from 15¢ to 40¢ a ton on products of the mines, and they also proposed maxima on products of the forests.

The railways proposed that the increases should be made effective on one day's notice.

The Commission found that it had not been shown that an emergency measure was necessary and that some increases were justifiable but solely as a temporary measure pending further hearing.

The case was further heard in October 1946, in *Ex Parte 162* (266 I.C.C. 537). The Commission found that there should be substantial increases in the

basic freight rates and charges of the railways. All basic rates were increased by 20%, class rates and less-than-carload rates and commodity rates were, in the main, increased by 25% within "official territory" and 20% and 22½% between other territories. The record was held open for the purpose of giving consideration to any necessary readjustments or corrections warranted by the circumstances. The Commission pointed out that in the previous case the temporary increases were in general 6% on all commodities except basic commodities, where the increase generally was 3%, and that in official territory the increase was 5%.

Reference was again made to the contentions of competing long and short haul shippers and producers of many commodities as to the relative fairness of flat increases as against uniform percentage increases or combinations of percentage increases and maximum amounts of increase, and to the fact that many stated frankly that rate relations are more important than the amount by which rates may be increased.

It is important to note that in the Appendix to the decision, wherein are shown the actual increases granted, the increases, in instance after instance, are subject to maxima.

In Ex Parte 166 (270 I.C.C. 403) submitted in December 1947, upon further consideration increases in basic freight rates and charges as previously authorized were modified in certain respects, the modifications including both increases and decreases. The petitioners in their original application sought increases of 25% and 15% in different territories, but by a later amendment in September 1947 asked that these be increased to 38% and 28% respectively, and then by a further amendment on December 3, 1947, the increases sought were raised to 41% and 31%.

The Commission pointed out that the increases granted in *Ex Parte 162* had not been upon a uniform basis; some flat increases were allowed and some percentage increases were subject to maximum amounts.

The Commission made some important observations which are here set out:

"The outlook of the Commission and its powers must be greater than the interest of the railways or of that which may affect those interests. It must be as comprehensive as the interest of the whole country. In view of the dominant role which the railways have played in the development of the country, these rate structures have been the product primarily of the many forces which have played on rail transportation. They have not been perfect but they have had a common purpose to accommodate the needs of commerce which possess an ever-present tendency to grow in volume and in the variety of commodities which compose it and to expand the radius of its distribution. Shippers have constantly manifested a desire to reach out farther and farther into distant markets. In no other country has there been such a degree of freedom of movement of commodities over great distances.

Rail rates, still the backbone of all transportation rates, are geared into the economic life of every section of the country . . . Many producers, traders and consumers are wholly or mainly dependent on rail transportation. Rate adjustments in these circumstances must be worked out primarily in terms of rail transportation. Rail rate structures are a matter of delicate balance . . . It is impossible, as a matter of law or of economic policy, completely to disregard the way in which these rate structures have been developed and the purposes they serve . . . The problems cannot be approached with the interests of only one class of the community in view . . .

As in all general rate increase proceedings, there has been acute disagreement between long haul shippers and those who are close to their markets . . . There are many competitive situations where no recognized differential relation of rates has been established but where nevertheless rates have been made to reflect competitive conditions and such situations greatly outnumber those in which fixed relations have been established. The application of a percentage increase to both long and short haul

competing shipments results in widening the amount of the difference between the rates, often to such an extent as to exclude the long haul shipper from the common market or compel him to reduce his prices so that he has no profit.

Carriers transporting for long haul shippers are also concerned with the maintenance of fixed differentials or differences, or at least in preventing increasing them to such an extent as to stifle competition and movement.

Contrariwise, shippers located so that their traffic moves shorter distances, pay or absorb a lower basic rate, and are subjected to a lesser amount of increase if the same percentage is applied to their rates as to the rates charged the competing long-haul shippers. This advantage they consider as justly due to their geographical situation and as properly to be insisted upon by them.

In resolving this conflict, both the carriers and the regulatory commission must have regard to the effect of the manner of increase upon the movement of traffic . . .

In this proceeding, it is shown that the petitioners, in formulating their proposals, decided upon a combination of percentage increases adjusted to regional needs with certain maximum limits to preserve traffic and lessen the unfavourable effect upon existing commercial relations and in some cases, stated flat amounts of increases . . . The system of making increases devised was generally similar to that employed by us in certain previous general rate proceedings . . .

There are also other situations where the allowance of any increases of substantial size must disturb pre-existing relations beyond the possibility of remedial correction so as to maintain the former competitive status.

We have the assurance of the petitioners of their intention to proceed by voluntary discussion and co-operation with the shippers and representatives of markets to devise and endeavour to put into effect such measures as will restore former competitive relations as completely as possible. We expect full and prompt compliance with these representations . . ."

In the result the Commission granted increases from 20% to 30% in different territories but it is interesting to note that on almost every item maxima were fixed.

In Ex Parte 168 (272 I.C.C. 695) in December 1948, there was an application for interim increases, upon short term notices, in all basic freight rates and charges. The increases varied in certain territories, e.g. 6% in eastern and southern, 5% in certain western territories, and 4% in others, etc.

Immediate interim increases were granted. Maxima were imposed on such items as fruits, vegetables, lumber, sugar, etc.

In Ex Parte 168 (276 I.C.C. 9) submitted in May 1949, as a result of further hearing after the interim case the Commission granted increases in basic freight rates of 10%, 9% and 8% in different territories. The railroads had applied for 8% in the first instance but later by amended petition asked for 13%.

The case reviews the history of the eight increases since the early days of World War II and it is of interest to note the increases in particular commodity groups, e.g.

70% increase on manufactures;

48.8% increase on products of the mines;

54.7% increase on agricultural products;

66% increase for both animal products and products of the forests.

The Commission referred to rate differences which exist between competing areas "which are not of the dignity of being differentials but which are of much importance to the trade".

It referred to rates on lumber "previously designed to preserve existing rate relations" between western and southern lumber in the principal consuming territory.

It also stated:

"The petitioning carriers have the burden of initiating and maintaining rates that comply with the Act. The burden is on them in good faith and with all possible promptness and in a spirit of co-operation to devise and suggest, for the consideration of the shipping public, the rates which, in their judgment, will correct maladjustments."

It is noteworthy that maxima were imposed on iron ore and anthracite coal, and also that lignite is treated differently from anthracite. Maxima were also imposed on fruits, vegetables, sugar, lumber and on combination rates.

The decisions of the Interstate Commerce Commission have been dealt with here at considerable length not only because some of them were cited in argument at the hearings, but because they illustrate the similarity of the problems presented in both countries and the difficulties to which these problems give rise.

In 1946 when the Interstate Commerce Commission granted a 20% increase it made the following statement:

"There are here involved all the freight rates and charges, and all the passenger fares of the railroads and many other carriers of the Nation, large and small. What we do will *directly affect production and distribution* in the industries of the Nation, and the *welfare of its various regions*, as well as the transportation industry. It will have its effect upon the forces tending to economic stabilization or the reverse . . . No case has ever received from us more earnest study." (Ex Parte 162, 266 I.C.C. at 613.)

Basic freight rates were authorized to be increased by 20% but there were numerous exceptions, e.g. products of agriculture 15%, animals and animal products 15%, and many items were subjected to maxima in cents per 100 pounds.

This statement is impressive as also is the action which followed. The case expresses both the importance of action taken by regulatory tribunals dealing with freight rates, and the possible effects on production, distribution and the welfare of regions.

CONCLUSIONS

1. Applications for uniform horizontal increases to all freight tolls assume that all freight can, under all conditions, bear an equal burden of increase. This is an incorrect assumption.
2. Horizontal increases, although preserving rate relationships percentage-wise, disturb them in cents per 100 pounds (or other unit) in so far as shippers and consignees are concerned, and this is of much importance to them.
3. Horizontal increases aggravate the disadvantage already suffered by long haul shippers and consignees.
4. The remedy does not lie in the prohibition, statutory or other, of horizontal increases, but is in the hands of the railways themselves. The railways should make studies of traffic conditions in all their bearings and should present to the Board, (in accordance with the foregoing precedents) proposals showing not only their maximum percentage increase requirement, but also, among other particulars, varying percentage increases on different commodities, flat, instead of percentage increases when these are more suitable, and maxima in appropriate cases in cents per 100 pounds or other unit. Special attention should be given to long haul traffic and to rates on basic (or primary) commodities. The Railways should be in a position to do this especially in the light of new statistical procedures. But if the railways do not approach the task in this way, it ought to be the duty of the Board to see that they do so. Presumably an examination of the "waybill study" undertaken by the Board will help to provide it with the requisite "reliable traffic statistics" which it stated were lacking in the 30% application.

5. Legislative amendment to bring about the desired result is not necessary, and it would be difficult to provide an adequately detailed procedure by statute. Each case must stand on its own merits; different considerations will apply under different economic conditions; and undoubtedly different considerations apply in the case of small, as compared to large, increases. It is the sudden shock to the economy caused by large horizontal increases that raises the problem, and this fact should receive the close attention of both the railways and the Board.
6. Commissioner MacPherson's statement in the 16% Case, quoted above, appears to put the question in its true perspective.

RECOMMENDATIONS

No legislative amendment dealing with horizontal increases is recommended. The Railway Act in its present form gives to the Board ample power to deal with matters of this kind.

In all future increase cases it is to be hoped that the Board and the railways will pay due regard to the considerations referred to in this section.

2. RATE BASE AND RATE OF RETURN

The Canadian Pacific Railway asked the Commission to recommend that a subsection be added to Section 325 of the Railway Act to provide as follows:

"Rates shall not be deemed to be just and reasonable unless, taken as a whole, they are sufficient to provide a fair return upon the investment in the railway property of Canadian Pacific Railway Company and the Board may from time to time determine the investment in railway property upon which the return is to be calculated and the rate of such return."

The proposal arose as a result of the submissions of the Canadian National Railways concerning its recapitalization. The Canadian Pacific stated that the Canadian National's recapitalization proposal constituted a potential threat to the continued existence of the Canadian Pacific as a private enterprise. The amendment is intended to meet that threat.

In introducing the amendment Counsel for the Canadian Pacific made the following statement:

"If, in the public interest, Canadian Pacific is to continue as a privately owned system, and I submit it should so continue, then the capital invested in Canadian Pacific must be protected and additional capital attracted to the enterprise."

In support of the proposed amendment the Canadian Pacific Railway Company contended:

1. That the "requirements method" which has been used in recent rate cases is too uncertain and contentious to be a fair or equitable method of determining the general level of rates, and that "the most expeditious and satisfactory method of determining a just and reasonable level of freight rates is on the basis of a fair return on a reasonable rate base";
2. That the use of the rate base and rate of return for determining just and reasonable rates would be of great benefit to the Board, to the public and to the railways;
3. That the adoption of the rate base and rate of return technique would eliminate many of the problems and disputes which have arisen in recent cases in connection with the treatment of other income and the apportionment of interest and dividends and, consequently, the Board would be able to deal with rate cases much more expeditiously than has been the case in the past; and
4. That the requirements method is unfair in that it does not take into account the surplus earnings which have been plowed back by the shareholders and invested in rail property and on which the shareholders are entitled to a return.

The Canadian National Railway Company opposed the proposed amendment as did also all of the Provinces appearing before the Commission except Prince Edward Island and Newfoundland, neither of which discussed the proposal.

POSITION TAKEN BY THE PROVINCES WITH RESPECT TO THE CONTINUED EXISTENCE OF THE CANADIAN PACIFIC RAILWAY COMPANY AS A FREE ENTERPRISE

With the exception of Prince Edward Island, which urged unification of the two major railways under government ownership, and Newfoundland, which did not discuss the matter, all the Provinces stated that the Canadian Pacific Railway Company should continue to operate as a free enterprise. This is pointed out because the basis of the proposed amendment seems to be to safeguard the position of the Canadian Pacific Railway Company as a free enterprise.

PAST DECISIONS OF THE BOARD OF TRANSPORT COMMISSIONERS

In 1911 in the case of Dawson Board of Trade v. White Pass and Yukon Railway Company, 11 C.R.C. page 402, the Board said:

"It should hardly be necessary to say that it is equally the duty of this Board to protect the capital actually put into a railway by its shareholders, as it is to protect the public against unjust charges by those who operate the railway for the stockholders. If it were shown that the tolls heretofore in existence upon this line of railway only produced sufficient revenue to pay the proper expenses of maintenance of way and equipment, traffic, transportation, general expenses, and fixed charges, and a fair dividend to the stock-holders upon the money actually put into the road, I should refuse to be a party to reduction of tolls, even if they were the highest in the world."

It was also stated:

"No controlling commission has the right to make an order that would have the effect of destroying the earning power of the capital that honestly went into the utility—the capital invested should be permitted to earn fair and reasonable dividends."

In 1914 in the *Western Tolls Case*, 17 C.R.C. 123, the Board said:

"Indirectly, of course, consideration is or always should be given to the necessity of enabling railways to obtain additional capital extensions of service, betterment of facilities; and the enlargement of terminals has from time to time to be made often in the old settled districts of the country, and apart from any questions of fairness to the railways themselves; but as a matter of public policy, railway rates should be rates of such a character as to attract investment and to render railway securities marketable."

And in dealing with the contention of Counsel that rates must be based on the returns of the weakest line:

"... rates should be considered having regard to the traffic necessities of Western Canada and a fair return to the carrier apart entirely from any question of reserves of the company on the one hand or liabilities of the company on the other."

and

"Any industrial enterprise has the right to a reasonable surplus over and above its fixed charges and dividends. A railway is also entitled to a reasonable surplus."

In 1920 in the *Edmonton, Dunvegan and British Columbia v. Central Railways*, 26 C.R.C. 153, the Board said:

"The burden of increased rates is one which should be imposed only when there is a thoroughly established justification therefor. At the same time, in the present application launched by the railways for a general increase in rates, much material was submitted re-enforcing what is a matter of common knowledge, namely that in the period which has elapsed since 1914 railway costs of operation have practically doubled while rate increases have been very much less. The weighty responsibilities imposed upon the Board by Parliament compel the conclusion that rates inadequately remunerative are not only detrimental to the railway concerned but in a wider and more important phase are detrimental to the public served by the railway, because if the rates do not adequately remunerate for the service the efficiency will tend to deteriorate, and there will be progressive difficulty in obtaining those adequate facilities which are essential if traffic is to move."

Again in 1920 in the case, *Governments of Manitoba and Saskatchewan v. Railway Association of Canada*, 26 C.R.C. 298, the Board said:

"Further if the rates fixed are not fair and reasonable to the railways as well as to the public, the public will suffer inasmuch as no railway compelled to operate on a non-paying basis can furnish either efficient service or adequate facilities for the handling of traffic."

and

"It will, I think, be admitted that an honestly organized and efficiently managed railway should be in a position to earn annually, over and above its operating expenses and costs of maintenance, such a sum as will enable it to pay its interest and other proper charges, and generally to maintain its credit and standing in the financial world."

In 1927, in *Re General Freight Rates Investigation*, 33 C.R.C. 127, the Board said:

"There is no occasion to labour the question that the railways must receive sufficient revenue to efficiently operate, to provide for all legitimate needs, and to make fair return to those whose money is invested in such business undertaking. The duty of the Board in this regard is recognized and was openly expressed even by those who, in individual instances, have asked for decreases in tolls levied upon themselves, or their business. We are all agreed that rates cannot be reduced to a level which would cripple the operation of the roads, or would make it impossible for them to effect such yearly increases in mileage and equipment which the growing necessities of the country demand."

And

"For a rate controlling body, as this Board is, created by Parliament, for the express purpose, as recited in the Order in Council, of fixing, determining and enforcing just and reasonable freight rates, based upon the principle of fair return, to make or to recommend reductions or readjustments in freight rates, which would bring any one railway company, giving vast transportation service in this country, to a state of financial condition where it has to face the possibility of a deficit, or shortage, in amount required to pay fixed charges and dividends . . . would be entirely subversive of the principles of its constitution, of the highest interests of this country and of the true spirit and meaning of the Committee of the Privy Council, which delegated to this Board the duty of investigating the whole freight rate structure."

The implications from the statements made in the decisions above referred to are: (1) that the Board has over the years acted on the basis that no order would be made that would imperil capital funds actually invested in the transportation systems; (2) that the Board has for a considerable period at least recognized the principle of a "fair return" to the carrier "on capital that honestly went into the utility"; (3) that the capital invested should be permitted to earn "fair and reasonable dividends"; (4) that the rates should be of such a character as to attract capital; (5) that a railway is entitled to earn a reasonable surplus, and (6) that rates should enable the railway to maintain its credit and standing in the financial world.

The Board has, however, made it equally clear that this is not its only function; the rates must be just and reasonable not only to the railways but also to the shippers and consignees.

In the 21% Case decided on March 30, 1948, the decision of the Chief Commissioner dealt with the question of Rate of Return, and after referring to the practice in the United States he said:

"The Railway Act of Canada does not lay down specific directions as to how we are to proceed, or what the Board is to take into account in fixing rates. The duty of the Board under the Railway Act is 'to fix, determine and enforce just and reasonable rates, and to change and alter rates as changing conditions or cost of transportation may from time to time require'.

"In previous steam railway rate cases the Board has not based its decisions on the relationship of net railway operating income to the investment in railway property used in transportation services. Nor do the railways in their present application ask the Board to fix a rate of return on their investment in railway property used in transportation services.

"I think, however, that we might appropriately have some regard to the rate of return on the amount invested by the railways in railway property used in transportation services, as a test by which the reasonableness of the rates may be judged. One difficulty, however, is in ascertaining the value of the railway properties so used in transportation services.

"The determination of the value of investment in railway property used in transportation services in Canada has never been undertaken. And the question is much too extensive and complicated a problem to be taken into consideration at this time.

"The Canadian National Railways and Canadian Pacific Railway Company, as an indication only, in their foundation exhibits, submitted to the Board that even with a thirty per cent increase in freight rates at the level of traffic anticipated, at the time such exhibits were prepared, the rate of return would only slightly exceed three per cent. A desirable rate of return for all Class 1 United States Railroads is considered to be in the vicinity of five and one-half per cent."

He then proceeded to consider the "financial requirements" of the Canadian National and Canadian Pacific railways and dealt with such matters as fixed charges and dividends, additions and betterments, maintenance of way and structures, maintenance of equipment, depreciation and estimates of railway operating income, and under the heading "Financial Need of Railways" said:

"It is abundantly clear that the applicant railways have established financial need for greater revenue, to enable them to continue to furnish for the country as a whole adequate and efficient transportation services, the necessity for which is vital and is acknowledged by everyone. This need has not been occasioned by fault of the railways, but by greatly increased operation costs brought about by most substantial advances in cost of materials and increases in the levels of wages and salaries. This situation can only be met by permitting an advance in rates and tolls.

"The next question for consideration is the determination of which, if any, of the railways should be taken as controlling the rates question.

"The Canadian National Railways and the Canadian Pacific Railway are the only two railways operating throughout the whole of Canada. The examination of the financial situation of the railways has been directed throughout the proceedings almost entirely to these two large transcontinental systems. The transportation operations of the other several railways are largely confined to somewhat restricted areas. It would, therefore, seem apparent that no one of these other railways can appropriately be taken as a guide or measure by which to determine what would be just and reasonable rates. That is rates just and reasonable to both the users of the railways who have to pay the rates, and to the railways."

The Chief Commissioner then made an estimate of the "Deficiency in Revenue" of the Canadian Pacific Railway based on the "Requirements" of that company for dividends, fixed charges and allowance for surplus, and estimated that it would require an increase of 21% in rates "to give the Canadian Pacific Railway Company the additional revenue required," and said: "Consequently I would allow the railway companies a general advance in freight rates . . ." He expected that this would give the Canadian Pacific an "even balance sheet at the end of its present fiscal year of 1948 and a small surplus on its railway transportation operations; but it may leave the Canadian National Railways somewhat short of their full requirements".

In the decision of the Board handed down on September 20, 1949, which constituted a review of the 21% Case and a consideration of the 20% application of the Railways the matter of a Rate Base and Rate of Return was again dealt with and the Chief Commissioner said:

"Counsel for the Canadian Pacific Railway endeavoured to show that a rate base had been established as a result of proper deductions from Exhibit 49-49 and the evidence in its support. The respondents refused to consider it open to the applicants on the hearing of this application to found their application on a rate of return on a rate base. The applicants did not when such objection was made by the respondents, apply to amend their application so that there would be before the Board as an alternative to the dollar requirements of the Canadian Pacific Railway a full discussion of a fair rate of return on a rate base. However, in view of the importance attached to the evidence and argument respecting rate base by counsel for the applicants I think it proper to make this brief comment.

"It is important to bear in mind that the introduction of the evidence and exhibits relative to the suggested rate base constituted a feature introduced into this application which feature was not submitted for consideration in the 21% Case. In the present

application the railway has introduced considerable further evidence pertaining to the value of its property and has asked the Board to make a finding as to what, in the circumstances, is a fair rate base and a fair rate of return. The railway contends that such a finding would fully justify the reasonableness of the rate increase now applied for to both the shippers and the railways."

Then after dealing with the railway company's exhibit he said:

"There may be advantages in being able to accept the statements of the company and disadvantages, from the standpoint of all parties, in making a rate base determination by other means. However I do not believe that such considerations justify me in determining without further evidence and investigation that the investments have been prudently made, and that the revenues have been sufficiently accounted for. Notwithstanding, therefore, the very able and learned arguments advanced by counsel for the Canadian Pacific Railway and notwithstanding the evidence of the learned experts, I accept the arguments advanced for the Province of Saskatchewan and the Maritime Transportation Commission that much more evidence than that adduced will be necessary to justify this Board in deciding that from this exhibit and the evidence in its support a rate base had been established for the purposes of dealing with this application."

Again in this case the "financial requirements" of the Canadian Pacific Railway were considered and the 8% interim increase granted was arrived at by considering the revenue deficiency of the Canadian Pacific taking into account its requirements to meet fixed charges, dividends and allowance for surplus.

The 8% increase was subsequently further increased to 16% by a decision of the Board rendered on March 1, 1950, following an appeal to the Supreme Court of Canada, and later was further increased to 20%—in each case based on estimated deficiencies in the revenue of the Canadian Pacific Railway to meet the financial "requirements" of that company.

To summarize the foregoing:

1. At no time in the history of rate regulation in Canada has the Board determined the level of rates for Railways in Canada on the basis of Rate Base and Rate of Return.
2. The Board in the post-war increase cases has used the Canadian Pacific Railway Company as the "yardstick" or guide or measure in determining the amount of the increase to be granted to the railways of Canada, even though it has said that the requirements of the Canadian National Railways should not be entirely disregarded and "some regard must ... be had to the needs of all the railways".
3. The Board said in its decision of September 20, 1949, that it did not have sufficient evidence before it to enable it to determine a "rate base" or the "investment in railway property" of the Canadian Pacific Railway upon which a fair return could be calculated.

THE PRACTICE IN THE UNITED STATES

In 1920 the Transportation Act was passed. That Act was described as "radically constructive," and its provisions with respect to the rule of rate making were hailed as a "solution" to the railway problem.

This rule which was incorporated in the Interstate Commerce Act as Section 15a read as follows:

"In the exercise of its power to prescribe just and reasonable rates the commission shall initiate, modify, establish or adjust such rates so that the carriers as a whole (or as a whole in each of such rate groups or territories as the commission may from time to time designate) will, under honest, efficient and economical management and

reasonable expenditures for maintenance of way, structures and equipment, earn an aggregate annual net railway operating income equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation: Provided, That the commission shall have reasonable latitude to modify or adjust any particular rate which it may find to be unjust or unreasonable, and to prescribe different rates for different portions of the country."

For the first two years Congress set as a rate of return $5\frac{1}{2}\%$ but authorized the Commission to add up to $\frac{1}{2}$ per cent for capitalizable improvements or betterments.

(The constitution of the United States provides that private property shall not be taken without the payment to its owner of due compensation. Hence the necessity which is felt to ensure that this safeguard to property rights shall be respected in legislation. Constitutional limitations of this kind do not exist in Canada. Parliament is free to prescribe any form of regulation which appears to it to be fair and reasonable.)

This rule of rate making failed to provide the railways as a whole a fair return on the fair value of their property and in 1933 Section 15a was replaced by the following (which is practically identical with the present Section 15a):

"In the exercise of its power to prescribe just and reasonable rates the Commission shall give due consideration, among other factors, to the effect of rates on the movement of traffic; to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable the carriers, under honest, economical and efficient management, to provide such service."

It is interesting to note that in the years 1921 to 1933 (both inclusive) the rate of return on investment, arrived at by the process of valuation, of Class 1 Roads in the United States varied from 1.24% to 4.96% and from 1933 to 1944 from 1.43% to 5.5% , and in no year during that period did the return equal $5\frac{3}{4}\%$.

Although the railways failed to earn the stipulated rate of return, the Interstate Commerce Commission in 1922 instead of raising rates, ordered a reduction, and denied proposed increases in 1926 and 1931 because of depressed conditions, and in the five-year period from 1931 to 1935 at no time did the rate of return equal even 2% .

While it is true that the net railway operating income is used by the Interstate Commerce Commission to determine the rate of return for the railways as a whole on their investment in railway property used in transportation service, and that valuations of railway properties have been made at tremendous expense and over a period of many years, and that the Commission has consistently referred to the ratio of net railway operating income to investment in railway property, nevertheless it has not been found practicable to provide rates which would yield a fair return to the railways as a whole in that country.

To summarize the experience in the United States:

1. The Act of 1920 which attempted to make a statutory "fair return" rule was found to be unworkable;
2. The Commission found that it was impossible to prescribe rates which would give the railways as a whole a fair return on investment in railway property; and
3. The Commission gives consideration to the return on railway investment, but it is neither the main nor only test used in determining just and reasonable rates.

PRESENT POWERS OF THE BOARD OF TRANSPORT COMMISSIONERS

No one appearing before this Commission seemed to doubt that the Board, under existing legislation, has the power to determine just and reasonable rates on the rate base and rate of return method. Indeed the Canadian Pacific Railway Company in its submission stated (before the introduction of the proposed amendment) that:

1. The Board is equipped to adjust the general level of rates from time to time and to determine the fairness of such rates to both shipper and railway;
2. No amendment is necessary to apply the principle of fixing general rate levels on the basis of a fair return; and
3. The determination and rate of return should be left to the Board, and such rate should be adjusted from time to time to reflect changing economic conditions, and the Board's discretion should not be limited by Act or otherwise.

The Board itself has never questioned its right to base its decisions on the rate base and rate of return method, but as late as 1948 pointed out that the determination of the value of investment in railway property used in transportation services has never been undertaken and said: "The question is much too extensive and complicated a problem to be taken into consideration at this time." It will be observed that the Board has specifically "left the door open" for consideration in the future.

It has been held by the Judicial Committee of the Privy Council that the Board's jurisdiction is "of the widest possible nature; its discretionary powers almost absolute in their breadth and freedom".

The question then of whether any amendment to the Railway Act is necessary to give the Board power to fix and determine just and reasonable rates on the rate base and rate of return method, must be answered in the negative. The Board has such power without amendment to the Act.

The Board has power to use the requirements of the Canadian Pacific as a yardstick or measure in determining what the level of the rates is to be. The Board likewise has power to use the rate base and rate of return method as applied to the Canadian Pacific Railway. Therefore no amendment is required to the Railway Act.

CONCLUSIONS

The questions raised by the proposed amendment, in the final analysis, are:

- (a) Should the Canadian Pacific be made the yardstick by statute? and
- (b) Should there be a statute which in effect places a "floor" for just and reasonable rates as a whole, the floor being a fair return on investment in railway property?

1. The Commission knows of no country where one railway is by statute made the yardstick for the determination of rates, not only on that railway itself, but on all other railways. The reasons would appear to be obvious: (a) conditions may change; (b) the proposed principle would involve the assumption that the railway so chosen is and will continue to be efficient and a proper yardstick under all circumstances; and (c) it would also assume that its adoption is in the interest of the country and of all other railways as well as the railway so chosen. But changing conditions may well be a reason for changing the yard-

stick, and the assumptions in (b) and (c) above cannot properly be made. For these reasons it would be unwise to fetter the Board by a statutory yardstick of this kind.

2. The experience in the United States as outlined above shows clearly that a statutory floor based on a fair return is impossible of achievement. It must be obvious to all that there may be periods of economic distress when no matter what the Statute provides in the way of a floor of the kind proposed, the Board could not set rates which would yield a fair return on property investment.

3. The present Section 325 which recognizes the powers given to the Board "to fix, determine and enforce just and reasonable rates, and to change and alter rates as changing conditions or cost of transportation may from time to time require", are broad and sweeping and they should remain so and should not be limited in the manner suggested by the Canadian Pacific's proposed amendment.

4. Rate making is of importance both to the public and to the railways. The purpose of regulation is to ensure fair rates to the public and to the railways since it is through rates that the railways carry on and earn a profit. If rates are too low adequate service is endangered and this is against the public interest. If rates are too high traffic may cease to flow and this is against both the interest of the public and of the railways. It is for these reasons that regulatory bodies are expected to fix and determine just and reasonable rates. The Board must determine both (1) the general level of rates and (2) the justness and reasonableness of particular rates. All rates must be quoted with a view to a preconceived total return. They have a tendency to remain for long periods at a certain level which is altered only to meet changes in economic conditions throughout the country. Rates are considered at such times as a whole rather than individually.

The task of the Board in fixing, determining and enforcing just and reasonable rates, involves a duty to both the railways and to the public; the Board must therefore be in a position that will enable it to determine, in so far as possible, the balance which will bring about this desired end. But since economic conditions may be such that different considerations exist under one state of affairs than under another, it is not proper to lay down the priority which should be given to the principles which guide the Board. The Canadian Pacific by its proposed amendment, asks that priority be given to the principle of a fair return on investment; yet experience has shown that such a factor may not be the guiding factor, it may be one which in times of economic depression must give way to other considerations. The procedure of rate making must be left flexible, and this flexibility now exists under the Railway Act.

5. If the proposed amendment submitted by the Canadian Pacific Railway were adopted it would tend to make the Board mere computers of a rate base and a rate of return, and calculators of the amount of increases necessary to bring about that rate of return. The Board should not be so atrophied. The Board's duty is to consider the justness and reasonableness of rates not only as a whole, but in particular as well. Fair return on property investment may be one of the tests; it must not be either the sole or guiding test.

RECOMMENDATIONS

The Commission does not recommend the amendment to Section 325 of the Railway Act as proposed by the Canadian Pacific Railway Company.

3. DELAYS IN FREIGHT RATE REVENUE CASES

The Canadian Pacific Railway alleges that the great delay in the disposition of general revenue applications made by the railways constitutes a major problem for them.

The Company prepared and submitted memoranda containing a list in chronological order of the outstanding events that occurred in respect to the recent rate applications both in Canada and in the United States. These are annexed hereto as Appendices "A" and "B" respectively.

They pointed out that one proceeding in Canada (now known as the "21% Case"), induced by a wage increase that came into effect on June 1, 1946, was pending from October 9, 1946, to April 8, 1948.

They compared the time taken in the Canadian application with that taken in similar applications in the United States before the Interstate Commerce Commission where, for example, in Ex Parte 162 in 1946 an interim increase was granted sixty-six days after the application was filed and the permanent increase became effective seven months and twenty days after the filing of the application. Similar comparisons in Ex Parte 166 in 1947 showed lapses in time of three months and three days for the first interim increase, two months and twenty-three days for the second interim increase, three months and fifteen days for the third interim increase, and three months and fourteen days for the permanent increase. These proceedings before the Interstate Commerce Commission in the United States were contrasted with the delay encountered before the Board in Canada in the aforesaid 21% case, where no interim increase was granted and the permanent increase was not made effective until nearly eighteen months after the filing of the application.

Both railways indicated that one of their major problems during the last four years was the "imbalance" between operating revenues and operating costs resulting from the "time lag" between rising costs and rate adjustments. Estimates were submitted of losses suffered by the railway companies amounting to many millions of dollars (for both railways in excess of \$150 million) as a result of this so-called "time-lag". Counsel for the Canadian Pacific, referring to its deficiency in rates stated: "So there is about \$80 million that is now water over the dam that can never be recouped by rate increases."

It was stated that there was criticism in the United States even of the much shorter periods of delay by the Interstate Commerce Commission.

CONCLUSION

It is necessary in the public interest that the Board should proceed with the utmost possible expedition when dealing with general revenue applications, whether made by the railways for increases or by the shippers for reductions in rates.

These applications are always made having regard to conditions existing at the time. If their determination is allowed to drag over a long period of months or even years, there is a probability of irreparable injury being done to those concerned. In the long run nobody benefits from such a state of affairs.

RECOMMENDATIONS

It is recommended accordingly:

That where the railways on the one hand, or applicants for reduction on the other, make out a prima facie case of need for increases or decreases in tolls,

the Board should consider the desirability of granting interim relief at the earliest possible date pending the final disposition of the application. The recommendations made in another chapter regarding uniform accounting and statistics will facilitate this desirable procedure.

No legislation is required to implement the recommendation made here on this most important subject. It is a matter of procedure which, under the Railway Act, the Board has power to regulate of its own motion.

APPENDIX "A"

MEMORANDUM OF DATES

- 1946*
October 9 — Railway Association launched application for 30% increase in freight rates (general wage increase to railway employees amounting to 10¢ per hour about to become effective retroactively to June 1, 1946. Estimated that such increase would add approximately \$40,300,000 per annum to railway operating payroll of all the companies affected).
- 1947*
February 11 — Opening of hearings before Board.
February 11 to May 9 } Hearings before Board in Ottawa.
May 22 to July 10 } Regional hearings in
Saint John, N.B.
Halifax, N.S.
Charlottetown, P.E.I.
Regina, Sask.
Vancouver, B.C.
Edmonton, Alta.
Winnipeg, Man.
Toronto, Ont.
Montreal, P.Q.
July 14 to August 14 } Hearings in Ottawa.
September 22 to October 17 } Hearings in Ottawa.
November 10 to December 17 } Hearings in Ottawa.
December 17 — Judgment reserved after 150 days consisting of 122 days of evidence and 28 days of argument.
- 1948*
March 30 — Judgment delivered authorizing 21% increase. Order No. 70425 — Formal Order of the Board.
April 2 — Wire, Premier of B.C. to Prime Minister requesting suspension of 21% increase.
April 3 — Wires, Premier Manitoba and Maritime Board of Trade to Governor in Council requesting suspension.

- April 5 — Tariffs filed effective April 8 increasing rates 21%.
Wire, Premier Alberta to Prime Minister requesting suspension.
Further wire, Maritime Board of Trade to Governor in Council requesting suspension.
- April 7 — Wire, Premier Saskatchewan to Prime Minister requesting suspension.
P.C. 1486 declining to suspend 21% increase.
P.C. 1487 directing Board to conduct general investigation.
- April 8 — 21% increase went into effect.
- April 12 — Announcement by Board of General Freight Rate Investigation.
- April 26 — Provincial Premiers meet Federal Cabinet and submit brief.
- July 14 — Wage increase 17¢ an hour announced, retroactive to March 1st, 1948.
- July 20 — Provincial Premiers again meet Federal Cabinet in Ottawa and submit further brief and also lodge Petition of Appeal.
- July 27 — Railway Association launched application for 20% increase (15% interim) and requested the Board to set application down for hearing "at the earliest possible date in September next".
- September 9 — C.P.R. received notice of motion of provinces dated August, 1948, for order staying all proceedings in 20% application pending disposition of appeal to Governor in Council.
- September 21 — Hearing of motion of provinces to stay and application of railways for early date for hearing. Chief Commissioner stated that the Board's engagements would not permit it to fix a date for the hearing before end of year and fixed Tuesday, January 11th, to commence hearing.
- September 27 and 28 — Hearing of appeal before Governor in Council.
- October 12 — P.C. 4678 directing review in 21% Case.
- December 29 — P.C. 6033 appointing Royal Commission.
- 1949
- January 11 to February 24 } Hearings before Board on review of 21% Case and on 20% application.
- March 28 to April 5 } Continuation of above hearings.
- April 5 — Judgment reserved after 21 days of evidence and 7 days of argument.
- September 22 — Judgment delivered authorizing 8% interim increase.
- October 6 — Notice by Canadian Pacific of application to Board for leave to appeal to Supreme Court of Canada.
- October 11 — 8% interim increase went into effect.
- October 27 — Board granted leave to appeal.
- October 31 — Chief Justice of Canada made order that Case on Appeal be filed on or before November 21, 1949, Factums of the parties to be filed on or before November 30, 1949, and that appeal be set down for hearing on December 5, 1949.
- December 5, 6, 7 and 8 — Argument of Appeal before Supreme Court of Canada. When judgment reserved on December 8th, Chief Justice announced judgment would be delivered December 22nd.
- December 22 — Judgment of Supreme Court of Canada to effect that Board had failed to perform its duty under Railway Act in not finally determining 20% application.

- December 23 — Upon application by Railway Association, Chief Commissioner fixed February 2nd for hearing of final determination, subject to representations of provinces to be heard on January 3rd, 1950.
- 1950
- January 3 — Hearing before Board when February 2nd confirmed as date for hearing.
- February 2, 3, 6 and 7 — Hearing before Board on application for final determination. Judgment reserved on February 7th.
- March 1 — Board delivered judgment authorizing 16% increase in place of 8% interim increase.
- March 10 — Notice by Railway Association of application to Board for Order changing, altering or varying Order dated March 1, 1950, by substituting 20% for 16%.
- March 17 — Petition by Provinces to Governor in Council under Section 52 of Railway Act by way of appeal from 8% Order dated 20th September, 1949, and from 16% Order dated March 1, 1950.
- March 23 — 16% increase went into effect.
- April 17 — Hearing before Board of Application by Railway Association for 20% in place of 16%.

APPENDIX "B"

RECENT DECISIONS OF INTERSTATE COMMERCE COMMISSION UPON RATE APPLICATIONS OF UNITED STATES RAILROADS

EX PARTE No. 162 — 264 I.C.C. 695; 266 I.C.C. 537.

- April 15, 1946 — Application filed for 25% increase, to be effective May 15, 1946, pending hearing.
- April 26 — Case re interim increase assigned for hearing.
- May 6-10 — Hearing of evidence re interim increase.
- May 11 and 13 — Hearing of argument re interim increase.
- June 20 — Interim increase granted (*Ex Parte* 148 rates made effective and certain rates increased by an additional 5%) — 264 I.C.C. 695.
- July 22-Sept. 20 — Regional hearings re permanent increase.
- Sept. 23-28 — Argument re permanent increase.
- Oct. 25 — Case submitted for decision.
- Dec. 5, 1946 — Permanent increase 20-25% granted, 266 I.C.C. 537.

EX PARTE No. 166 — 269 I.C.C. 33; 270 I.C.C. 81; 93; 403.

- July 3, 1947 — Application filed for 15 to 25% increase.
- July 23 — Application amended.
- Sept. 5 — Application further amended to 28-38%.
- Sept. 9 — Motion at opening of hearing for interim increase of 10%.
- Sept. 9-18 — Hearing of evidence.
- Sept. 18-19 — Hearing of argument.
- Oct. 6 — Interim increase of 10% granted, 269 I.C.C. 33.

- Nov. 3-Dec. 13 — Hearings, regional, etc.
- Dec. 15-20 — Argument.
- Dec. 29, 1947 — Additional 10% interim increase granted, 270 *I.C.C.* 81.
- April 13, 1948 — Interim increases 20-30% granted in lieu of those of Oct. 6 and Dec. 29, 1947. 270 *I.C.C.* 93.
- July 27, 1948 — Permanent increase granted, readjusting upwards and downwards the interim increases. 270 *I.C.C.* 403.

EX PARTE No. 168 — 272 *I.C.C.* 695; 276 *I.C.C.* 9.

- Oct. 1, 1948 — Application for increase of 8%.
- Oct. 12 — Application amended to 13% with request for interim increase of 8%.
- Nov. 30-Dec. 7 — Hearing of evidence.
- Dec. 8-10 — Hearing of argument.
- Dec. 29, 1948 — Interim increase 4-6% granted. 272 *I.C.C.* 695.
- May 21, 1949 — Case for permanent increase submitted for decision.
- August 2, 1949 — Permanent increase 8-10% granted. 276 *I.C.C.* 9.

4. APPEALS TO THE GOVERNOR IN COUNCIL

The Canadian Pacific Railway Company urged the Commission to recommend the repeal of Section 52(1) of the Railway Act which provides as follows:

"The Governor in Council may at any time, in his discretion, either upon petition of any party, person or company interested, or of his own motion, and without any petition or application, vary or rescind any order, decision, rule or regulation of the Board, whether such order or decision is made *inter partes* or otherwise, and whether such regulation is general or limited in its scope and application; and any order which the Governor in Council may make with respect thereto shall be binding upon the Board and upon all parties."

The Company dealt with the subject at length but the following quotations from the argument of its Counsel contain the main reasons submitted by it for justification of such recommendation. Counsel stated:

"The existence of Section 52(1) presents in my submission, two simple alternatives—

"(1) Its repeal would remove the decisions of the Board from the possibility of political interference. The Board, feeling its new independence, would gain courage, strength and impartiality, and soundness and dependability of judgment would soon develop;

"(2) The second alternative is its continuation. Its continuation would only serve to perpetuate the weakness and uncertainty of administration that must now unconsciously beset the Board. There would be no relief from the stimulation of political pressure for results that may have popular public appeal with certain sections of the country, regardless of the serious injury that may in the ultimate result be caused to the economy of the country as a whole."

"Prior to 1903, railways in Canada were regulated by the Railway Committee of the Privy Council. This body was first constituted by the Railway Act of Canada 1868 (Sections 23-47). The Railway Committee of the Privy Council was composed of elected representatives of the Canadian people. Its members were charged with all the responsibilities of Ministers of the Crown, as well as their duties regarding regulation of Canadian railways. The Committee had not the time, nor the opportunity, nor the facilities for taking up questions respecting the control and regulation of traffic upon railways and the rates and tolls to be charged by them. This work could be more efficiently performed by a tribunal specially constituted for that purpose."

"... the prime purpose of establishing the Board was to remove railway regulation from the political arena and to place it in the hands of an administrative tribunal with the necessary technical training and assistants. As previously indicated, the Appeal to the Governor in Council from the Board was retained on the theory that it was necessary to preserve ministerial responsibility. Canadian Pacific submits that the retention of the Appeal, justified as it may have been in the transition period following the formation of the Board, no longer exists."

"The Railway Act provides for an appeal from the Board to the Supreme Court on matters of law and jurisdiction. The decisions of the Board of Transport Commissioners are final on questions of fact but Section 52(1) allows the Governor in Council to review, vary or rescind decisions whether of law or fact. Canadian Pacific submits that there is no necessity for an appeal on questions of fact from the Board. The Board, assisted by their experts and with their knowledge of transportation problems, and after hearing evidence, is the only body that can intelligently and equitably deal with disputes between the public, government bodies and the railways. The protection of the public interest does not require an appeal from the Board to the Governor in Council. If the Board issues orders which are truly contrary to the public interest of Canada, the public is protected by the ability of the Minister to refer matters to the Board, by the ability of the Governor in Council to refer matters to the Board, and by the overriding ability of Parliament at all times to amend railway legislation."

Counsel also stressed the point that there is no appeal in the United States to a body comparable to the Cabinet and appeals in that country lie only to a court of law.

Counsel further referred to various statutes in provinces in Canada where Public Utilities Commissions had been established, and pointed out that the only appeal provided for in these statutes is to the Supreme Court in the Province and this only on questions involving jurisdiction or other points of law.

The Company proposed an amendment to Section 52(2) of the Railway Act, which Section reads as follows:

"An appeal shall lie from the Board to the Supreme Court of Canada upon a question of jurisdiction, upon leave therefor being obtained from a judge of the said Court upon application made within one month after the making of the order, decision, rule or regulation sought to be appealed from or within such further time as the judge under special circumstances shall allow, and upon notice to the parties and the Board, and upon hearing such of them as appear and desire to be heard, and the costs of such application shall be in the discretion of the judge."

Counsel for the Company said:

"Under the Act as it now stands, an appeal to the Supreme Court of Canada upon any question of law can only be had if the Board decides that the question is one of law and grants leave to appeal. If, on the other hand, an appeal is desired on a question of jurisdiction, an appeal may be had upon leave being obtained from a judge of the Supreme Court or upon leave being obtained from the Board. It would not seem to be right that the Board which rendered a decision that involves a question that may be one of law, should be the only tribunal to determine whether such question is one of law and whether an appeal should be had. The problem that arises in determining whether a particular question is one of law or of fact is often a difficult one."

"It is therefore submitted that your Commission should recommend that subsection (2) of Section 52 should be amended by inserting after the words 'question of jurisdiction' in line 2 thereof the words 'or upon a question of law'.

"So that we could go to a judge of the Supreme Court, or the provinces could go to a judge of the Supreme Court, and have them decide whether there was a question of law upon which leave to appeal should be granted."

THE SUBMISSIONS OF THE PROVINCES

The Provinces of Alberta, Saskatchewan, Manitoba, New Brunswick and Nova Scotia and the Maritime Board of Trade all strenuously opposed the repeal of Section 52, subsection (1), and argued that the appeal to the Governor in Council should remain. Their arguments may be summed up as follows:

- (a) The Provinces would never be satisfied to have the Board of Transport Commissioners the final court;
- (b) The railways are instruments of national policy and the Federal Cabinet should be able to review decisions which affect the economy of the whole country;
- (c) The small number of appeals allowed by the Governor in Council indicates that the Governor in Council has not unduly interfered with the Board's decisions;
- (d) The principles enunciated by the Governor in Council have been judicial in character and the Governor in Council has only interfered when the Board has proceeded on some wrong principle or has otherwise been subject to error;
- (e) There is no evidence that any decisions have been given otherwise than upon the merits and upon the evidence; and

- (f) It is in the public interest that the right of appeal should continue as the first object of the railways is revenue.

THE EXPERIENCE UNDER THE ACT

(i) *Formal Hearings before the Board*

The Board in the 47 years (1904-1950 inclusive) has heard over 2300 cases at formal hearings.

In the last 14 years (1937-1950 inclusive) it has received and dealt with over 28,400 applications and complaints or an average of over 2,000 per annum.

In the same 14 year period, 651 cases have been dealt with at public hearings—an average of approximately 47 per annum.

Approximately 98 per cent of all applications and complaints were disposed of without the necessity of formal hearings.

(ii) *Appeals on jurisdiction or other questions of law to the Supreme Court of Canada*

In the 47 year history of the Board (1904-1950 inclusive) there have been 79 appeals to the Supreme Court of Canada; of this number 16 were allowed and the others dismissed, withdrawn or abandoned.

In addition the Board has referred 7 matters to the Supreme Court for opinions.

(iii) *Appeals to Governor in Council*

(a) *Number of cases appealed*

The following tabulation will summarize the history of the working of Section 52 of the Act providing for appeals, throughout different periods since the Board came into being in 1904.

TABLE SHOWING THE NUMBER OF CASES APPEALED FROM THE BOARD
TO THE GOVERNOR IN COUNCIL AND THE DISPOSITION THEREOF
AS AT DECEMBER 31, 1950

—	Total Number of Appeals	Number Dis- missed	Number Referred back to Board	Number Aban- doned	Number Allowed	Number With- drawn	Number Pending
For the 20 year period 1904-1923 (incl.).....	36	19	8	6	2	1	0
For the 15 year period 1924-1938 (incl.).....	13	7	3	1	1	1	0
For the 12 year period 1939-1950 (incl.).....	5	1	1	0	0	0	3
Total for the 47 year period 1904-1950 (incl.).....	54	27	12	7	3	2	3

It will be observed:

- (1) That in 47 years only 54 cases were appealed to the Governor in Council;
- (2) That in the first 20 years there were twice as many as in the last 27 years;
- (3) That in the last 12 years there were only 5 appeals;

- (4) That 50% of the appeals were dismissed;
 22% referred back to the Board;
 16% abandoned or withdrawn;
 6% allowed, and
 6% still pending; and
- (5) That only 3 appeals have been allowed in 46 years and only one appeal allowed in the last 26 years.
- (b) *Nature of the cases appealed*

An examination of the cases which have been appealed to the Governor in Council discloses that:

- (1) With few exceptions every decision of the Board granting a general increase in tolls or increased rates on grain has been carried to the Governor in Council; there have been 5 appeals from general increases: 2 were dismissed, and 3 referred back. There were 3 appeals relating to Crowsnest Pass rates, rates on grain to the Pacific Coast and rates on grain and grain mill feeds: 1 was allowed, 1 dismissed, and 1 referred back;
- (2) A large number of appeals (26 in all) have had to do with such things as abandonments, location of crossings, sidings, spurs, grade separations, viaducts, location of lines, stations, facilities, etc.;
- (3) A considerable number of appeals (20 in all) have had to do with details of the rate structure such as rates on lumber and forest products, glass bottles and jars, cream, ice cream, classification of ice cream, export arbitraries on flour; and with miscellaneous matters such as passenger service, branch train service, rates on small railways such as the Yukon Railway, express rates, telephone rates, overcharges, etc.;
- (4) That of the 3 appeals allowed by the Governor in Council, 1 dealt with a crossing, 1 with an increase in rates on cream and 1 with the Crowsnest Pass Rates; and
- (5) In no case has the appeal been allowed in a general revenue case except in the way of reference by the Governor in Council back to the Board.

THE PRINCIPLES ON WHICH THE GOVERNOR IN COUNCIL ACTS IN DISPOSING OF APPEALS

The Governor in Council has in various Orders in Council enunciated the principles which have been recognized as governing the exercise of his jurisdiction on applications made under Section 52 of the Railway Act. In an Order in Council made in 1933 and reported under the title "Re Railway Freight Rates in Canada" 40 C.R.C. page 97, it is stated:

"The Committee deem it proper, in connection with the said appeals, to call attention to the principles that have in the past been recognized as governing the exercise of the jurisdiction of the Governor in Council on applications made to him under the provisions of Section 52 of the Railway Act. As has been pointed out in previous Orders in Council, 'the intent of the legislation is to invest His Excellency in Council with judicial powers by which he may in his discretion aid in securing and enforcing the provisions of the Railway Act, having due regard to the method of railway rate regulation by an independent commission which was the outstanding innovation in the Railway Act of 1903 and which has been preserved throughout succeeding revisions of the Act to the present time.' (Order in Council P.C. 2166, dated the 24th day of October, 1923.) ...

Further, that 'in appeals to the Governor in Council from the Board of Railway Commissioners a practice has grown up not to interfere with an Order of the Board unless it seems manifest that the Board has proceeded upon some wrong principle, or that it has been otherwise subject to error. Where the matters at issue are questions of fact depending for their solution upon a mass of conflicting expert testimony, or are otherwise such as the Board is peculiarly fitted to determine, it has been customary, except as aforesaid, not to interfere with the findings of the Board.' (Order in Council P.C. 1170, dated the 17th day of June, 1927.)"

It would seem clear (a) that the enunciated policy of the Governor in Council is not to interfere with an Order of the Board unless it seems manifest that the Board has proceeded upon some wrong principle or that it has been otherwise subject to error; (b) that the practice of the Governor in Council has followed the enunciated policy; and (c) that the record over the years discloses clearly that not only have there been a very limited number of appeals but that in only three cases have such appeals been allowed.

CONCLUSIONS

1. The history of the legislation in this country indicates that Parliament has always felt that the Government should take an active interest in both the railways and the regulatory body. Examples of this may be found in Sections 36 and 38 of the Railway Act which provide as follows:

"36. The Board may, of its own motion, or shall upon the request of the Minister, inquire into, hear and determine any matter or thing which, under this Act, it may inquire into, hear and determine upon application or complaint, and with respect thereto shall have the same powers as, upon any application or complaint, are vested in it by this Act.

"38. The Governor in Council may at any time refer to the Board for a report, or other action, any question, matter or thing arising, or required to be done, under this Act, or the Special Act, or any other Act of the Parliament of Canada, and the Board shall without delay comply with the requirements of such reference."

These Sections would seem to indicate that the Government is to keep in touch with matters relating to railways. Particular attention is called to the language of these Sections and the words "any matter or thing which under this Act" and "any question, matter or thing arising or required to be done under this Act."

2. In this country relations between Parliament and the Government on the one hand and the railway companies on the other, have always been such that Government supervision over railway matters cannot be altogether abolished. Canadian railways have been projected and built as manifestations of public policy, usually with financial assistance recommended by the Government, agreed to by Parliament and paid for by the people of the country.

For all these reasons it is extremely difficult to recommend that the Government should disassociate itself entirely from the activities of the railways and the performance by the Board of Transport Commissioners of its duties.

3. The parties should have the right of applying either to the Board or to a judge of the Supreme Court of Canada to determine whether a question of law is in dispute. The problem that arises in determining whether a particular question is one of law or fact is often a difficult one; in such cases the parties before the Board should have an opportunity to have this question decided by a judge of the Supreme Court.

RECOMMENDATIONS

1. It is not recommended that Section 52(1) of the Railway Act be repealed or amended.
2. Section 52(2) should be amended by inserting after the word "jurisdiction" in line 2 thereof the words: "or upon any other question of law."

5. CONTROL OF THE BOARD OF TRANSPORT COMMISSIONERS BY THE GOVERNMENT

Manitoba contended that railway transportation is too vital a factor in the national economy to be regulated only by an independent tribunal without the ultimate responsibility for regulation resting upon Parliament and the Government. Although Parliament may alter the Railway Act, Manitoba argued that this control is "somewhat less than what is desired," and urged that the Governor in Council be given power to direct the Board and to "ensure that the actions of the Board are not inconsistent with what is in the best interests of Canada from the standpoint of the best economic policy."

The Province proposed amendments to Section 38 "to enable the Governor in Council to give directions to the Board in respect of policy," and to Section 52(1) "to make it clear that the Government has the power to remit and to remit with directions." Subsequently Manitoba withdrew the first of these amendments.

Section 52(1), if amended as proposed, would read as follows:

"52(1). The Governor in Council may at any time, in his discretion, either upon petition of any party, person or company interested, or of his own motion, and without any petition or application, vary or rescind any order, decision, rule or regulation of the Board, whether such order or decision is made *inter partes* or otherwise, and whether such regulation is general or limited in its scope and application, *and remit any matter to the Board with directions respecting the disposition thereof*; and any order which the Governor in Council may make with respect thereto shall be binding upon the Board and upon all parties."

The words in italics constitute the only change in the existing section.

Manitoba intimated that the power to give "directions" would give the Governor in Council power to dictate matters of "policy". The Province, however, was unable to offer an interpretation of the word "policy" definite enough to justify asking to have it embodied in legislation.

CONCLUSIONS

Prior to 1903 the railways in Canada were regulated by a "Railway Committee of the Privy Council". Parliament decided after thorough inquiry that for various reasons this was not satisfactory. Among the reasons given were:

1. The Government has a dual function—political and administrative;
2. There is no continuity of tenure;
3. There is lack of technical training for the work;
4. The lack of migratory organization renders it impossible to deal effectively with smaller complaints; and
5. The distance to be travelled by the complainants makes the expense great.

For these reasons Parliament created a body to deal with the regulation of rates, etc.

The constitution of the Board as an independent regulatory tribunal was hailed as a step in the right direction. Manitoba's proposal would be a long step backward toward the situation which Parliament attempted to correct in 1903.

Parliament has given to the Government adequate control and responsibility under the Statute as it now stands: Sections 36, 38 and 52 of the Railway Act. These sections afford the Government ample power to inquire into and obtain reports on any "matter or thing arising, or required to be done" under the Railway Act, and enable the Governor in Council to vary or rescind any order, decision, rule or regulation of the Board. Examples of the extent to which the Government has gone in exercising these directive powers may be found in Order in Council No. 1487 respecting equalization and in Order in Council No. 4678 referring the Board's judgment in the 21% Case back to the Board for consideration in the light of certain changes in conditions referred to in the Order in Council.

It is the expressed desire of all the parties appearing before the Commission, including Manitoba, that the members of the Board be of the highest ability and character devoting their whole time to the often difficult work of regulating transport in the interest of shippers, consignees, railway companies and the Canadian people as a whole. Any suggestion that the part to be played by the Board is to be reduced in responsibility far below that which is placed upon it today would surely tend to prevent the acceptance by the proper class of men of positions on that tribunal.

RECOMMENDATIONS

The amendment proposed by Manitoba to Section 52(1) of the Railway Act cannot be recommended.

CHAPTER III

PARTICULAR FREIGHT RATE PROBLEMS

1. STANDARD MILEAGE CLASS RATES

Standard Mileage Class Rates have been aptly described as the "ceiling" rates — they constitute the maximum tolls above which the railways are not permitted to go.

The amount of freight now hauled under these rates is estimated to be less than 1% of the total traffic.

It has therefore been suggested that these rates are of little practical value to shippers and provide very little additional revenue to the railways.

It is probable that they have outlived whatever usefulness they may once have had.

All the Western Provinces as well as other parties appearing before the Commission asked that in any event these rates be made uniform across the country. Manitoba and Alberta went further and suggested that they be abolished and that the traffic presently moving under them be hauled under rates established by a uniform distributing or town tariff scale, which would then become the "ceiling" rates.

The carriers made no serious objection to the proposal to abolish the standard mileage class rates. They did state, however, that these rates are the "key" on which other rates are based and that they are necessary to preserve flexibility in the rate structure.

CONCLUSIONS

Since such a small proportion of freight moves under standard mileage rates it does seem illogical that they should be the "key" rates or form the basis for other rates. Moreover, it seems equally illogical that there should be more than one class rate scale. The standard mileage class rates have outlived their usefulness and should be abolished.

RECOMMENDATIONS

It is recommended that Section 328 and all other pertinent sections of the Railway Act be amended to provide for the abolition of standard mileage tariffs.

2. COMPETITIVE RATES

Competitive rates are lower than the normal rates which would ordinarily be charged on the same commodities and are made by the railways for the purpose of obtaining or retaining traffic which would otherwise be forwarded by competing transport agencies.

Competition has always existed between the railways and steamships operating on the St. Lawrence River and Great Lakes, and along the coasts of the Maritime Provinces and British Columbia. In addition intercoastal competition for transcontinental traffic has been active for many years.

The water competition in Eastern Canada originally influenced the setting of the so-called "normal" rates in that area in a downward direction.

Competition of steamships with the railways still prevails and another competitive factor appeared in the 1920's when, with the improvement of highways, motor vehicle services were established between communities.

Competition from trucks has become serious because of their faster service and flexibility of operation. A rate structure emphasizing low rates on low grade articles and high rates on high grade articles leaves the railways in a particularly vulnerable position.

As a result of competition from steamships and trucks the railways have been compelled to introduce competitive rates in areas influenced by competition while leaving rates unchanged between intermediate points or within other areas not so influenced.

The final type of competition which has influenced rates has aptly been termed "market-competitive".

It arises out of the efforts of the producer at a distant point to sell his goods in a market which is also served by a producer with a short haul. It also involves the efforts of the manufacturer or consumer to obtain his supplies of raw materials, and semi or fully processed products at as many points of origin as possible, and of the railways to secure long-haul business. This particular form of competition has resulted in pressure upon the rate structure.

A different type of market-competitive rate is one published to meet competition of extraneous sources; for example, a rate on glass from Ontario points to Vancouver to meet the competition of similar glass imported direct from Belgium by steamship to Vancouver.

THE AUTHORITY FOR COMPETITIVE RATES

The Railway Act of 1903 recognized competition, and the present Act still provides authority for tariffs of competitive rates under Sections 314(5) and (6), 328(c), 329(4) and 332.

Such rates do not apply at intermediate points where there is no competition, and are not considered as discriminatory when compared with other rates where the traffic conditions are not the same. The "long-and-short-haul" clause of Section 314(5) contains the authority for permitting the charging of a higher rate to short-haul points on the same line or route, than to a farther distant point, provided the Board is satisfied that owing to competition it is expedient to allow such toll; subsection (6) of the same section authorizes the Board to declare that any places are competitive points within the meaning of the Act and Section 329(4) permits competitive tariffs to specify rates to or from any specified point or points which the Board may deem or has declared to be competitive points not subject to the "long-and-short-haul" clause.

In numerous judgments the Board has held that it is entirely within the discretion of a railway company whether it will meet the competition in tolls of other transport agencies, subject to the prohibitions in the Railway Act with respect to unjust discrimination: *B.C. Sugar Refining Company v. C.P.R.* (1910). 10 C.R.C. 169. Conversely, a shipper is not entitled to less than normal tolls because of competition which a railway in its discretion does not choose to meet: *Blind River Board of Trade v. G.T.R.* (1913) 15 C.R.C. 146. It is also within the discretion of a railway company to restore rates to the normal basis when competition ceases: *Regina Board of Trade v. C.P.R.* (1917) 22 C.R.C. 315. The railway company's right to meet or disregard competition is subject to one qualification: That if it decides to lower its rates to meet competition it must not cause unjust discrimination. This means that if two stations adjacent to each other on the same line or route are subject to the same competition the railway may not give the reduced rate to the shippers at one station without giving it also to the shippers at the other station in the same common district: *Salada Tea Company v. C.F.A.* (1924) 30 C.R.C. 153 at 164.

THE COMPLAINTS

All the Western Provinces contended that the railways have reduced their normal rate level in Ontario and Quebec by the publication of competitive rates. They said that the railways necessarily have to recover their reduced intake on competitive eastern traffic by charging higher rates on non-competitive and long-haul traffic in Western Canada.

It was also contended that many competitive rates in the East are lower than the cost of carrying such traffic, and that this throws an additional burden on Western traffic.

It was further contended that the Board allows the railways too free a hand to institute competitive rates and that once established, these rates are left in the tariffs long after the conditions which caused their publication have disappeared. It was also stated that the railways do not always advance competitive rates when general increases have been authorized by the Board, thus throwing an unduly high proportion of the increases upon the non-competitive rates.

A collateral complaint was that of the Maritime Provinces. This complaint was to the effect that the reductions in railway rates to meet competition in Ontario and Quebec without corresponding reductions in Maritime rates had partially destroyed the 20% preference under the Maritime Freight Rates Act. This subject is dealt with elsewhere.

THE PRESENT SITUATION

Similar complaints with respect to competitive rates were addressed to the Board by the Western and Maritime Provinces in the hearings in the 21% Increase Case, even before the rates were released from Wartime Prices and Trade Board control in September 1947, but the complaints have lost much of their substance today. Since release from price control and also during the course of this inquiry the railways appear to have done a great deal of "house-cleaning" of their competitive rates.

Senior railway traffic officers said that they would not knowingly publish a competitive rate that did not return its operating costs and something more. They would forego the traffic to competitors rather than accept it at a loss.

The Railways state that competitive rates have, generally speaking, been advanced percentage-wise as much as or more than ordinary rates, although the railways did not apply the final 4% general increases to these rates.

By way of emphasis the railways submitted that the only rates not now compensatory are those which the railways are under constraint to maintain at their present levels. These are:

1. The Crowsnest Pass Rates on grain;
2. Rates on coal from Alberta to points in Ontario; and,
3. The ex-lake export grain rates to Saint John and Halifax.

Crowsnest rates are statutory and are dealt with elsewhere in this Report. Rates on coal were introduced in 1925 by arrangement with the Federal Government and reduced to \$8.00 a ton in 1934 as an emergency measure to relieve unemployment in Alberta. At present the rate is \$8.40 of which the shipper pays \$5.90 and the Government \$2.50. The normal rate from Drumheller to Toronto is \$13.10.

The ex-lake export grain rates to Saint John and Halifax are rates on grain which has come down the lakes by steamships, mainly from Western Canada, and which moves by rail from ports on Georgian Bay to Montreal, Saint John

and Halifax for export. These export rates are maintained at a low level by reason of the national policy, collaborated in by the Railways, which seeks to ensure the passage of this traffic through Canadian seaports.

The Railways also submitted that competition with highway carriers is becoming stronger on the Prairies, in British Columbia and in the three Maritime Provinces, and that it is growing in intensity as more paved highways are being built. This it is said will have the effect of introducing more competitive rates in those areas; in fact some of the present lowest competitive rates in Canada are those on less-than-carload merchandise between Calgary and Edmonton.

THE SUGGESTED REMEDIES

Although throughout the course of the hearings very restrictive remedies were suggested, including the giving of approval by the Board before the Railways could publish competitive tariffs, all parties, before the conclusion of the hearings, admitted that the Railways should be free to publish competitive tariffs to meet competition from other transport agencies, and that the remedy ought to be found in a closer supervision of the rates by the Board to ensure:

- (a) That the competition actually exists;
- (b) That the rates are compensatory; and
- (c) That the rates are not lower than necessary to meet the competition.

CONCLUSIONS

Competitive rates are an important factor in the rate structure. No one who appeared before the Commission advocated their abolition.

The Railways should neither be denied the right to meet competition nor, when once they have decided to publish competitive tolls in one area, be forced by law to apply these same tolls to other regions where competition between transportation agencies is non-existent.

Requiring competitive tariffs to be approved by the Board before they became effective would hamper the railways in their efforts to increase their revenue.

RECOMMENDATIONS

The following recommendations are concerned only with carrier-competitive (and not market-competitive) tariffs. It is not recommended that formal applications be submitted to the Board whenever it is desired by the Railways to meet competition. Such rates are frequently made in agreement with shippers, and no shipper is likely to withhold shipments from other modes of transportation while the railway makes applications to the Board and obtains the necessary authority, sometimes after considerable delay, to publish the rates agreed upon.

The Board already has some regulations with respect to competitive rates and it is suggested, in view of the complaints which have come before the Commission that these regulations should provide that whenever a railway files a competitive tariff or an amendment thereto, it shall simultaneously supply the Board with information similar to that now filed with applications for the approval of agreed charges. This information includes (a) the name of the competing carrier or carriers; (b) the route over which they operate; (c) the rates charged by the competitors with proof of such rates as far as ascertainable; (d) the tonnage normally carried by the railway between the points of origin and destination; (e) the amount of tonnage diverted from the railway or which will be diverted if the rate is not made effective; (f) the extent to which the net revenue of the railway will be improved by the proposed changes; (g) the revenue per ton-mile

and per car-mile at the proposed rate; (h) the corresponding averages of the system or of the region in which the traffic is to move, and (i) any other information regarding the movement which will serve to justify the proposed rate.

This recommendation, if adopted, will provide the Board with data from which to judge the strength of competition and the necessity of taking action to suspend or disallow any competitive rate if such rate, in the Board's judgment, should become unnecessary; or, to suspend, disallow or order an increase in such rate if in the Board's judgment it is not compensatory or is lower than necessary having regard to the competition to be met.

Competitive rates will of course continue to be subject to challenge by any shipper or representative body of shippers who may consider them unduly preferential or unjustly discriminatory.

The Railway Act should be amended to give the Board powers to act as suggested herein.

3. DISTRIBUTING CLASS RATES

In Eastern Canada distributing rates apply on freight moving both out of and into the distributing centre or town; these rates are called "Town Tariff" or "Schedule A" rates.

In Western Canada the comparable rates are called "Distributing Rates" and they apply only to shipments from the distributing centre outward and not to shipments from outside points to the distributing centre, though there are some exceptions to this rule.

The purpose of these Town Tariff or Distributing Rates is to provide cheaper transportation on shipments from distributing centres to outlying points within the area. The railways have so far considered that the greater volume of shipping from these distributing points warranted the lower rates.

Many submissions were made and were unanimous in asking that this regional difference be abolished and that there be uniformity in the rates both inbound and outbound to and from the distributing points in the West as in the East.

There were also submissions concerning the application of standard mileage class rates on goods from the United States crossing the international boundary at points in the West such as Emerson in Manitoba and Coutts in Alberta. It was asserted that shipments from these stations to points in Western Canada should be charged distributing class rates rather than standard mileage class rates.

CONCLUSIONS

The question of the application of lower rates from border points is not strictly a matter of distributing rates but rather one affecting the reasonableness of the rates now applied. In any event it is a matter peculiarly for the Board to deal with and may be automatically solved by the proposals made in the chapter on Equalization.

There appears to be complete unanimity among those appearing before the Commission that there should be uniformity in distributing class rates throughout the country and that regional differences in such rates should be abolished.

The time has come for the abolition of regional differences of this character. This would be effected by implementation of the recommendations respecting one uniform equalized class rate scale as proposed in the Equalization chapter.

4. AGREED CHARGES

An "agreed charge" is a rate agreed upon by a carrier for the transport of all or any part of the goods of any shipper or group of shippers.

In Canada agreed charges were first authorized in 1938 by the provisions of Part V of the Transport Act enacted in that year. The Canadian Act follows legislation enacted in the United Kingdom in 1933, known as the Road and Rail Traffic Act; but our legislation is more restrictive in character.

The Board of Transport Commissioners since the Act came into force, and until the 31st December, 1950, has approved 45 agreed charges for the railways of Canada, 38 of which were made to meet highway competition and 7 to meet water competition. Of this number 23 were in force on December 31st, 1950, involving 73 shippers. The gross revenue from agreed charges by the two major railways, in 1950, was in the vicinity of \$10 million.

The Transport Act requires that the agreed charge must be approved by the Board, but the Board is not to give its approval if in its opinion the object of the agreement can be secured by means of a special or competitive tariff of tolls under the Railway Act. When the transport is by rail from or to competitive points, or between competitive points on the lines of two or more rail carriers, the Board's approval cannot be obtained unless both (or all) such carriers join in the making of the agreed charge.

The Act contains provisions for (a) the filing of the agreement with the Board; (b) the publication of notice of application for approval in the Canada Gazette and in such other manner as the Board may direct; (c) the hearing of all interested parties on the application for approval; and (d) the right of any shipper who considers that his business will be unjustly discriminated against by the agreed charge to apply for a fixed charge for the transport of his goods if they are the same as or similar to those covered by the agreed charge.

The Act provides that the agreed charge "shall be made on the established basis of rate making and shall be expressed in cents per one hundred pounds or such other unit as the Board may approve; and the carload rate for one car shall not exceed the carload rate for any greater number of cars".

The Act also provides that on any application "the Board shall have regard to all considerations which appear to it to be relevant and, in particular, to the effect which the making of the agreed charge or the fixing of a charge is likely to have, or has had, on —

- (a) the net revenue of the carrier; and
- (b) the business of any shipper by whom, or in whose interests, objection is made to approval being given to an agreed charge, or application is made for approval to be withdrawn".

COMPLAINTS

Complaints were made against the principle and administration of agreed charges. Briefly they were on the following grounds:

1. By the Province of Manitoba: (a) that the agreed charge method of rate making might eliminate truck competition rather than meet it; (b) that the agreed charge favours the larger shipper; and (c) that the power which the railways have to file competitive tariffs is sufficient without resorting to the agreed charge; the Province accordingly asked for the repeal of Part V of the Transport Act;
2. By the Province of Alberta: that the agreed charge puts the small shipper at a disadvantage, and that all shippers, regardless of size, should be treated alike; Alberta also asked for the repeal of Part V of the Act.

3. By the Canadian Manufacturers Association: that the agreed charge method enables the large shipper to "make a deal" with the railways which the smaller shipper may not be able to make because of his inability to agree to the same terms, and that the railways should not be able to say, "We will give you a better rate if you give us all your business";
4. By the Canada Steamship Lines Limited: (a) that the agreed charge is an exceptional method of rate making, and is really a private contract whereby the carrier undertakes to transport the goods of an individual shipper on terms more favourable than those offered by the carrier to the general public, and (b) that its effect is to deny to other competing carriers the opportunity of competing for the business while the agreed charge remains in force. The company expressed the view that, having regard to the exceptional method of rate making which the agreed charge allows, the safeguards now contained in the Act are the very minimum necessary; that delay and publicity ought to be inherent in so radical a departure from normal rate-making methods; and that unrestricted use of the agreed charge by the railways "would force water carriers to the wall".

POSITION TAKEN BY THE RAILWAYS

The Canadian Pacific Railway Company states that the present provisions of the Transport Act with respect to agreed charges are satisfactory and, while it would not object to "greater flexibility", no amendment is suggested. The company presented evidence to show that agreed charges are compensatory, and the Waybill Analysis supports this view. The company contends that the agreed charges are not unfair to the small shipper, because any shipper may obtain the benefit of agreed charges granted to another shipper provided the goods are the same or of similar kind in both cases and are offered for carriage under substantially similar circumstances and conditions.

The Canadian National Railway Company contends: (a) that Part V of the Transport Act is unsatisfactory in its present form; (b) that the purpose of the Act is to enable the railways to meet the competition of other transport media, particularly of motor trucks, and that the Act had failed in this purpose; (c) that delays in securing approval of the Board have been protracted, extending from thirty-four days to as long as a year and ten months; (d) that since any carrier regulated by the Act can be heard in opposition to the application for approval, a water carrier, a portion only of whose own rates may be under regulation, has the right to object to the agreed charge on the ground that its business will be prejudiced by it; and that this is unreasonable and unfair to the railway. The Judicial Committee of the Privy Council in *C.N.R. v. Canada Steamship Lines Limited et al*, in 1945, 58 C.R.C. 113, interpreted the Transport Act as providing that the Board may, upon an application for approval of an agreed charge, regard as a relevant consideration the effect which the making of the agreed charge is likely to have on the business or revenues of other carriers under the Act including steamship lines.

The Canadian National accordingly proposed an amendment to the Transport Act which would repeal the present Section 35 and substitute the following:

"35. Notwithstanding anything in the Railway Act, or in this Act,

(1) A carrier may make such charge or charges for the transport of goods of any shipper or for the transport of any part of his goods as may be agreed upon between the carrier and that shipper. Provided that when the transport is by rail from or to a competitive point, or between competitive points on the lines of two or more carriers by rail, such competing carriers by rail shall be permitted to enter into negotiations and shall have the right to join in making the agreed charge.

(2) A duplicate original of the agreement setting out the particulars of the agreed charge shall be filed with the Board within seven (7) days after the date of the agreement, and the agreed charge shall become effective thirty (30) days after the date of such filing.

(3) Any shipper who considers that his business will be unjustly discriminated against if an agreed charge is made by the carrier, or that his business has been unjustly discriminated against as a result of the making of an agreed charge, may at any time apply to the Board for a charge to be fixed for the transport of his goods (being the same goods as or similar goods to and being offered for carriage under substantially similar circumstances and conditions as the goods to which the agreed charge relates) by the same carrier with which the agreed charge is proposed to be made, or is being made, and, if the Board is satisfied that the business of the shipper will be or has been so unjustly discriminated against, it may fix a charge (including the conditions to be attached thereto) to be made by such carrier for the transport of such goods.

(4) The Board, in fixing a charge, may fix it either for such period as it thinks fit or without restriction of time, and may appoint the date on which it is to come into operation, but no such charge shall be fixed for a period beyond that for which the agreed charge complained of by the shipper remains in effect.

(5) All agreed charges shall contain a cancellation clause giving either party the right to cancel the agreement upon specified notice."

It will be observed that this amendment would:

1. Do away with the necessity of prior approval by the Board;
2. Make it unnecessary for a rival rail carrier to join in the agreed charge;
3. Eliminate the requirement that the agreed charge must be made on the established basis of rate making;
4. Eliminate the requirement that the carload rate for one car shall not exceed the carload rate for any greater number of cars;
5. Eliminate the provision that the Board shall not approve the agreed charge if, in its opinion, the object may be secured by means of a special or competitive tariff of tolls under the Railway Act;
6. Prevent objection to agreed charges by a water carrier regulated under the Act; and
7. Prevent any objection to the agreed charge by a shipper; instead the shipper who considers that his business will be unjustly discriminated against is merely permitted to apply for a fixed charge.

The proposed amendment is admittedly very far-reaching but the Canadian National Railways endeavoured to justify it by contending:

- (a) That the agreed charge is fundamentally nothing more than a special form of competitive rate and should therefore not require prior approval of the Board;
- (b) That trucks in Canada are not regulated as the railways are, and that they accordingly "pick and choose" the traffic, and generally take the higher-rated goods while the railways must carry the low-rated goods;
- (c) That so long as the trucks are unregulated the railways need the agreed charge procedure to be used as a "weapon" to enable them to cope efficiently with the trucks; and
- (d) That the present Act does not give sufficient freedom to the railways and that consequently the trucks are getting business which the railways should get and which they could handle more economically.

The Canadian Automotive Transport Association in referring to agreed charges said that they "catered to big business", that the Canadian National proposal was a reversion to the "law of jungle", and that, although the railways should be permitted to use competitive rates, they should not be permitted to

use the agreed charge. The Association admitted, however, that truckers might enter into agreements which would be similar to agreed charges, but stated that it is not their practice to do so.

REPRESENTATIONS IN SUPPORT OF PROPOSED AMENDMENT

The representations made on behalf of the Canadian National Railways in support of the proposed amendment are in effect as follows:

1. That admittedly the agreed charge practice needs some reasonable control, but that the present control procedure is too cumbersome and should be replaced by a more workable one;
2. That the proposed new practice would enable the railways to deal more effectively with truck competition;
3. That beyond a limited zone the truck is a more expensive medium of transport than the railway and consequently if the railways were free to use their full strength in the larger competitive zone and to reduce their rates on the higher class goods to the railway cost level, plus some profit, the trucks would be unable to operate beyond the limited zone within which they admittedly have an advantage; and
4. That the average out-of-pocket cost to the railways is one cent per ton-mile, while that of the truckers is not less than three cents and probably as much as four or five cents per ton-mile, and that if the railways brought their rates down to an all-inclusive cost of one and one-quarter cents (which they could do) no truck company could meet this competition outside the limited zone.

The position of the Canadian National Railways therefore is (1) that there is need of rational and reasonable control of the agreed charge practice, and (2) that the railways' requested amendment would undoubtedly place in its hands an extremely potent weapon capable of driving the trucks out of business in what is referred to as the "competitive" zone.

ATTEMPTS TO RECONCILE THE POSITION OF THE TWO MAJOR RAILWAYS

Following the hearings, and because of the sweeping nature of the amendments proposed by the Canadian National Railway Company, that company and the Canadian Pacific Railway Company were asked to consult together in order to see whether they could agree on proposed legislative amendments. For a long time they were unable to do so. When, however, the Canadian National did agree that an agreed charge should not be made without the concurrence of competitive railways when the transport is by rail from or to a competitive point, or between competitive points on the lines of such railways, the two railways came very close to agreement.

The Canadian National admits that its proposed amendment may have gone too far in excluding the Board's power to disallow an agreed charge, but says that the agreed charge should become effective not later than thirty days after it is filed with the Board, and that thereafter the Board might be given power to disallow it, if after complaint and hearing it decided that the agreed charge was unjust and unreasonable. The company says that its proposal is, in effect, that an agreed charge might be disallowed by the Board only on the ground that the rates charged under it are not compensatory.

The Canadian Pacific thinks the shipper should be able to object either before or after the agreed charge becomes effective but only if the rate is not compensatory or is otherwise unreasonably low; if the complaint is that the rate is discriminatory, then the shippers' only remedy would be to secure a fixed charge; the Board would not disallow the agreed charge.

THE FINAL REASONS GIVEN FOR THE AMENDMENT

The Canadian National submitted the following reasons for seeking relaxation of the present provisions of Section 35 of the Transport Act:

1. "To get around the Privy Council Decision in the Canada Steamship case";
2. "To simplify the procedure";
3. "To avoid the delays"; and
4. "To strengthen our competitive position in respect to trucks."

Each of these reasons must be carefully examined.

1. *The decision of the Privy Council* above referred to held that the Board is not precluded, in the present statute, from regarding as relevant considerations, in granting or refusing its approval, the effect which the making of the agreed charge between a shipper and competing carriers by rail is likely to have on the business and revenues of the other carriers mentioned in the Act.

Under this interpretation a water carrier regulated under the Transport Act can object to an agreed charge made between a shipper and the railways, and the Board can, in deciding whether or not it shall approve the agreement, take into consideration the effect which such agreement will have on the business and revenues of the water carrier.

The railways ask that both the right of objection and the consideration of the effect on the business and revenue of the water carrier be taken away.

The question involved is: Should the railways be entitled to enter into an agreed charge regardless of the effect on the business and revenue of the water carriers regulated under the Transport Act?

Parliament, by the present legislation, recognized that the water carrier plays an important role in the transportation of goods and did not intend to give the railways absolute freedom to make agreed charges regardless of the effect on the business and revenue of the water carriers. It would be unwise to amend the Act in this respect. If the agreed charge is aimed chiefly at the trucks (and this is what the railways say) it is hard to see what there is to prevent the railways and the water carriers from entering together into agreed charge contracts on the basis of proper traffic differentials. However, the water carriers in such a case should be left free to join, or not to join, with the railways.

2. *Simplification of procedure.* The proposed amendment goes much further than to provide a mere simplification of procedure. It imposes upon a complainant the burden of proving that a railway rate is non-compensatory thus practically putting him out of court.

The point involves a question of whether the procedure should be simplified when the power granted to the railways is such an extraordinary one. The agreed charge method of rate making, even under the present practice, is contrary to well established principles of rate making under the Railway Act. It binds the shipper by agreement to ship all or an agreed portion of his goods by the carriers with whom he makes the agreement for a long period, usually for at least a year, and it gives the shipper a rate lower than the rate in the tariffs published under the Railway Act. This extraordinary procedure should be accompanied by the publicity and safeguards now required by the Transport Act. It must be remembered that the Railway Act now gives to the railways power to meet competition by the publication of competitive tariffs with a minimum of delay. The Transport Act adds to this power and empowers the railways to enter into agreed charges where the publication of competitive tariffs or special tariffs will not secure the object of the agreed charge. Such a power should not be exercised without close supervision. The procedure should

not be simplified. It is important also that shippers and carriers should have an opportunity of being heard, so that the Board may be made aware of all aspects of the question. The present procedure permits of this being done; the proposed procedure would enable the agreed charge to come into effect automatically within thirty days after the filing of the agreement with the Board, only to be disallowed if it is shown to be non-compensatory.

3. *Avoidance of delays.* The railways suggested that great delays had been encountered in securing the approval of agreed charges and referred to one case where it had taken one year and ten months.

Particulars have been obtained of all 45 agreed charges which were approved by the Board and 2 which were not approved (totalling 47 submitted) between March 15, 1939, (the date the first application was received) and December 31, 1950. It is found that there were 37 uncontested cases and 10 contested cases. Of the latter 2 were not finally approved. The time consumed between the date on which the application was received by the Board and the date of the order of approval or disapproval is as follows:

Uncontested		Contested			
Number of Cases Approved	Number of Days	Number of Cases Approved	Number of Days	Number of Cases Not Approved	Time taken for final Disapproval
1	27	1	37	2	About 5 years
1	33	1	50		
3	34	2	55		
5	35	1	111		
8	36	1	112		
5	37	1	227		
4	38	1	686		
1	40				
1	41				
2	42				
1	44			—	
2	47				
1	50				
1	86				
1	133				
37		8		2	

It will be observed that in 29 cases the time taken to secure approval was 40 days or less; that in 8 other cases the time taken was 50 days or less, and that in 2 uncontested cases it took 86 and 133 days respectively to obtain approval.

Thus in 35 of the 37 uncontested cases the average time taken to secure the Order was only about 37½ days, and even including the two exceptional cases the average time for all 37 cases is only 41 days.

The facts appear to disclose an entirely satisfactory record warranting no criticism. It is shown that in the uncontested case which took 133 days the Board was not satisfied, without study by its Economics Bureau, that the agreed charge was compensatory and accordingly investigated the matter at some length.

As to the contested cases 4 were approved in 55 days or less and the 4 others consumed 111, 112, 227 and 686 days respectively before the Board's Order was granted. These cases must be regarded as exceptional.

It is to be observed that two agreed charges which were not approved took over five years before final decision was rendered by the courts. These two cases involved appeals by the railway company to the Supreme Court of Canada and

to the Judicial Committee of the Privy Council in England. It is significant too that Section 35(4) of the Transport Act authorizes the Board to approve the date on which the charge shall become operative "or as from which it shall be deemed to have become operative", but such date shall not be earlier than the date on which application for approval was lodged. The record shows that the Board has in almost all cases caused the approval of the agreed charge to be retroactive to the date the agreement was lodged with the Board.

Delay under these circumstances cannot justify any change in the legislation.

4. *Strengthening the Railways' Competitive Position.*

The argument of the railways on this point may be shortly and fairly put as follows:

- (a) The railways are regulated, the trucks are not regulated;
- (b) The trucks can pick and choose the traffic and take the high-rated traffic;
- (c) The railways must take all the traffic offered to them, both high-rated and low-rated; and
- (d) The railway policy has been to carry the low-valued traffic at low rates and make their profit on the high-valued traffic; the trucks are now taking away the profitable traffic which means that the low-valued traffic will have to bear higher rates which it perhaps cannot afford.

The main complaint is that the trucks are not regulated, and one of the railway witnesses stated that truck regulation is not the answer in any event because, if they were regulated, persons and industries would buy their own trucks. From this he concludes that the use of the agreed charge method of rate making is the only answer to the problem raised by what he terms "the erosion of the profitable rail traffic by motor trucks".

The problem is a serious one, and exists not only in Canada. Attempts to solve it in other countries have not been successful. The agreed charge has not solved the problem in Britain, and in that country there is not the problem of division of jurisdiction over the respective competitors that exists here.

The problem is not essentially one of regulation on the one hand and non-regulation on the other. The main reason for the regulation of railways in the first instance was their monopolistic position coupled with the fact that they supply an essential service which, if not satisfactorily carried out, cannot be supplied by anyone else because of the facilities of operation which would be required. The position of the trucker who offers his truck for hire is entirely different. He has not only competition from other forms of transport, but has many competitors in his own field, and from private truckers as well. If the price for his services is too high, persons and industries can, with comparative ease and small cash outlay, purchase their own trucks. This problem is dealt with elsewhere in this Report, but is outlined briefly here simply to show the relationship of agreed charges to the problem of truck regulation.

The problem before the Commission is simply this: Should the railways be given an extraordinary weapon which might have a serious effect on the trucking industry far beyond that of "meeting" its competition?

The agreed charge if widely used could bind shippers to the railways for unrestricted periods of time by an agreement which would exclude the trucks from participating in the traffic of such shippers.

This might prevent the growth of a form of transport which may be of great value to the commerce of the country. Two instances of the value of the trucks to Canada have occurred in recent years, the first during the last war, and the

second during the recent railway strike. Any weapon which might seriously endanger or bring about the elimination of the trucking industry must be guarded with close restrictions.

It is to be borne in mind that although their rates are regulated, considerable freedom is left to the railways in regard to competitive rates, and this freedom should not be impaired substantially. The object is to permit the railways to meet competition, not to destroy or eliminate it.

The danger in the proposed amendment lies in the power it would give to stifle competition. The Act as it now stands gives to the railways an extraordinary power (one which has not been accorded to the railways in the United States) and one which should not be extended.

CONCLUSIONS

1. One of the main principles of railway rate making is that a railway must charge equal tolls for like services. Parliament in authorizing the agreed charge created an exception to this general rule to enable the railways to meet the unregulated competition of trucks. Nevertheless in enacting the provisions of Part V of the Transport Act it took great care to surround the exceptional power which it had granted with restrictions to prevent the improper use of agreed charges.
2. It appears obvious that Parliament did not intend the agreed charges to be a weapon to destroy or eliminate competition but rather to enable the railways to meet competition. This is clear from a reading of Section 35(1):

“... the Board shall not approve such charge if, in its opinion, the object to be secured by the making of the agreement can, having regard to all the circumstances, adequately be secured by means of a special or competitive tariff of tolls under the Railway Act or this Act.”
3. The present Act has not yet had a fair trial. It was first introduced in 1937 and enacted in 1938, when economic conditions were vastly different from those existing today. Then followed the period of the war and the “freezing” of rates until September 15, 1947. Since then the country has enjoyed a period of comparative economic prosperity which has perhaps made extensive use of the agreed charge unnecessary.
4. It would be unwise:
 - (a) To eliminate the existing requirement that competing rail carriers must join in making the agreed charge;
 - (b) To eliminate the provision that the agreed charge shall be made on the established basis of rate making and shall be expressed in cents per 100 pounds or such other unit as the Board may approve; and that the carload rate for one car shall not exceed the carload rate for any greater number of cars;
 - (c) To eliminate the provision that the Board shall not approve such charge if, in its opinion, the object can adequately be secured by means of a special or competitive tariff of tolls under the Railway Act;
 - (d) To eliminate the required approval by the Board of an agreed charge; and
 - (e) To eliminate the right of other regulated carriers to object to the agreed charges.
5. It is to be observed that as the law now stands truck competitors (since none of them are included in the Transport Act) are not entitled to object to an agreed charge made by rail or water carriers.

RECOMMENDATIONS

None of the amendments to the Act proposed by the Provinces or by the railways can be recommended.

5. TERMINAL RATES

On freight moving in Western Canada out of and into Port Arthur, Fort William and Armstrong in Ontario, Churchill in Manitoba, and Vancouver, New Westminster, Victoria and Prince Rupert in British Columbia, the applicable class rates are called "terminal rates". The difference in nomenclature arose by virtue of the so-called "Manitoba Agreement" of 1901 entered into between the Province of Manitoba and the Canadian Northern Railway, under which the Province gave to the Railway a subsidy to build a line from Winnipeg to Port Arthur, and the Company agreed to reduce the class rates between these two points by a certain percentage. When the rates were published, their effect was to make the new rate from Fort William to Winnipeg (a distance of 420 miles) the same as the existing standard mileage rate for 290 miles. Thus for the purpose of computing the distributing rates from the Head of the Lakes to points on the Prairies, 130 miles were deducted. This arrangement was accepted by the Canadian Pacific and later by the Grand Trunk Pacific. It was applied to and from the coast by the Board and voluntarily applied to and from Churchill.

Complaints were made that this constructive mileage rule unduly favours Manitoba, because the benefit of the deduction of 130 miles diminishes as one goes westward. To illustrate: by virtue of the arrangement the terminal rate on first class traffic between Fort William and Winnipeg is 21% less than the standard mileage rate; at Regina it is 13% less; at Calgary 7% less, and at Vancouver 2% less.

CONCLUSIONS

This is another contentious feature of the rate structure with which the Board has power to deal. It is pointed out in the chapter on Equalization that the elimination of so-called terminal class rates in Western Canada would tend towards the attainment of the goal of equalization.

6. TRANSCONTINENTAL RATES

Transcontinental rail freight rates apply on traffic hauled by the railways across the continent in competition with steamships which operate through the Panama Canal or direct to the Pacific Coast ports. They are competitive rates, but unlike most competitive rates, they apply generally from or to a large area in Eastern Canada and to or from the "port area" surrounding the Pacific Coast ports.

Transcontinental rates apply particularly to products on which water competition is keen but not to perishable commodities on which speed of delivery is important, and rail rates are usually somewhat higher than steamship rates because the railways are able to charge more for greater speed and scheduled time of delivery.

TERRITORY INVOLVED

Transcontinental rates apply generally from the whole of Eastern Canada; shippers or receivers in the entire triangular area between Montreal, P.Q., Windsor, Ont., and Sault Ste. Marie, Ont., usually enjoy the same transconti-

mental rate. At points east of Montreal small "arbitraries" are added to the Montreal rates for the additional distance; thus anyone using the railway throughout the whole of Eastern Canada has available transcontinental rates, which are in effect the entire year. During the summer period there are additional transcontinental rail and water rates available at a slightly lower differential than the "all rail" rate, for example, by rail to Port McNicoll or Sarnia thence by steamship via the Great Lakes to Port Arthur and Fort William and by rail to the Pacific; or a still lower rate via the river and lake steamships direct by water between ports on the St. Lawrence and Great Lakes to Port Arthur or Fort William thence by rail.

The territory covered by transcontinental rates in Eastern Canada is so extensive because ocean steamships, with connecting river and truck services, between lake ports and inland centres, can take traffic out of or into the entire eastern half of the continent. It is not uncommon for articles destined to the Pacific Coast to be moved from Toronto, Hamilton or Windsor to Montreal for furtherance by intercoastal vessels to Vancouver; and under favourable water-rate conditions a shipment could be moved from as far west as Fort William to Montreal for furtherance to the Pacific Coast by intercoastal steamship, although this would be an extreme case. Movements to Montreal for ocean transit are carried by rail, water or truck. Intercoastal steamships operating between Montreal and Vancouver make a practice of absorbing some of the charges of the trucks or railways from points in Quebec and Ontario to the port of Montreal.

At the other side of the continent the transcontinental rates apply only at the Pacific Coast ports and the trucking areas surrounding those ports; the rates are confined to this comparatively small area because there are no navigable inland waterways to provide competition with the railways in that territory. Transcontinental rates, being carrier-competitive, are not applied from or to intermediate points on the prairies and in Eastern British Columbia. There are, however, exceptions made by the railways because of market-competitive pressure; for example, on canned meats from Winnipeg to the Pacific Coast, and on canned fruits and vegetables from the Okanagan Valley to Eastern Canada.

COMPLAINTS

None of the steamship interests complained of the practice of the railways in publishing transcontinental rates; nor did the railways complain of the low steamship rates through the Panama Canal.

The complaints have come mainly from Alberta on behalf of consumers and distributors in that province, especially at Calgary and Edmonton, who object to the anomalies existing in some striking examples of these competitive rates from the East to the Pacific Coast compared with the normal rates to intermediate points.

The avowed policy of the railways has been to publish transcontinental rates applicable to commodities which ordinarily move from coast to coast and which are suitable for transportation by steamship. Many of these rates are higher than the rates to intermediate points and, therefore, cause no complaints. Others are very little lower than the rates to intermediate points. There are, however, some transcontinental rates (relatively few in number) which are very low in comparison to the rates to intermediate points. These have given rise to bitter complaints. A few examples will make the situation clear:

Item	Present all-rail rate to Calgary or Edmonton	Transcontinental rate to Vancouver
	Per 100 pounds	
Canned Goods.....	*V \$2.65	\$1.40
Structural Steel.....* $\left\{ \begin{array}{l} C \\ E \end{array} \right.$	*S 2.07 $\frac{1}{4}$ *S 2.36 $\frac{1}{4}$	1.32
Cast Iron Pipe.....* $\left\{ \begin{array}{l} C \\ E \end{array} \right.$	*V 1.73 *V 1.85	1.00
Cooking Oils.....	2.88	1.65
Flannelette Blankets.....	*A 6.58	3.31

Rates are as of December 31, 1950.

*A — Any quantity, carload or less.

*C — To Calgary.

*E — To Edmonton.

*S — From Sault Ste. Marie, Ontario only.

*V — Combination on Vancouver.

Most of these articles are especially suited to water transportation as they are heavy in relation to their bulk and the intercoastal steamships can afford to carry them at low rates which, as shown, have a drastically competitive effect on the railway rates.

AUTHORITY AND JUSTIFICATION FOR TRANSCONTINENTAL RATES

The Railway Act, Section 314, ss. 5-6, has permitted the establishment of transcontinental rates without necessarily applying them from or to intermediate points; this statutory authority is known as the "long and short haul" clause.

Transcontinental rates have been justified on precisely the same grounds as other competitive rates. If the railways cannot get business at normal charges, they may properly offer lower rates. As long as the reduced tolls yield something more than the transportation costs, the railway is better off than if it had refused to reduce the normal rates and had lost the business entirely; the railways obtain some net revenue they would not have otherwise received and this net, however small, reduces the amount which the non-competitive business would have to contribute in order to provide the carrier with its necessary total income.

While there always has been (save in exceptional circumstances such as war) some steamship service to the Pacific Coast which has affected railway rates from the East, the acute period of competition with the Canadian transcontinental railways occurred after the opening of the Panama Canal in 1914.

The competition at the Pacific Coast is threefold: (1) from steamships between eastern Canada and west ports; these steamships, like our railways, carry goods of Canadian origin, e.g. Canadian canned fruits and vegetables; (2) from steamships plying between other countries and Canada's Pacific Coast, carrying direct imports from the United Kingdom, Europe, the United States, the West Indies and the Orient, e.g. British cast iron pipe in competition with Canadian pipe from Toronto or Trois Rivières, and (3) from American railways (such as the Great Northern penetrating British Columbia from the south) which carry United States goods at low rates to compete with American steamship services, via the Panama Canal, e.g. stoves from Ohio in competition with stoves from Toronto.

Any one of these factors compels the Canadian railways to publish transcontinental rates if they are to keep a share of the traffic.

The Province of Alberta has made this complaint one of its important issues in this inquiry, no doubt for the reason that some transcontinental rates create outstanding anomalies compared with normal rates at intermediate points such as Calgary and Edmonton. The normal rates between the east and the Prairies, because of the long distance, are high in dollars and cents. Frequently there are only "class" rates to intermediate points such as Calgary and Edmonton, and the publication of a low competitive rate to Vancouver results in a considerable disparity between the two rates.

It is really the size of this disparity in dollars and cents per 100 pounds, in the instances mentioned, that is the cause of the complaints; if the difference were only a few cents per 100 pounds the disparity would scarcely be noticed. It seems difficult at first to understand why a rate on canned vegetables from Toronto to Calgary should be \$2.65 per 100 pounds when the rate on the same article to Vancouver is \$1.40 per 100 pounds.

For many years the extreme anomalies created by transcontinental rates have been a sore point in the Province of Alberta, particularly in Calgary and Edmonton which pay the highest intermediate rate of any distributing point short of Vancouver.

Alberta does not deny that the railways, when there is active water competition to be met, may publish transcontinental rates, and concedes that rates to Vancouver may in some cases properly be lower than the rate to intermediate points; the real complaint is that the disparity between some transcontinental rates and the rates to the intermediate point is unreasonable.

Saskatchewan and Manitoba have also been affected to a lesser degree. The Province of Manitoba raised the point that the low transcontinental rates give the Eastern manufacturer and the Pacific Coast distributor an advantage against the Winnipeg manufacturer and distributor who pay normal rates into and out of Winnipeg on raw materials and finished goods destined to the Pacific Coast. The Manitoba complaints, however, were limited to a few instances such as shipments of electric batteries and workmen's clothing.

THE REMEDY PROPOSED

The Province of Alberta submitted that the Board should regularly examine the conditions lying behind transcontinental tariffs and that it should not permit such rates unless (a) competition is active, compelling and beyond the control of the railways, and is present at the competitive point and absent at the intermediate points; (b) the rate to the competitive point is no lower than necessary to meet the competition which is present there; (c) the rail rate to the competitive point is such that the net earnings would be greater than they would be in the absence of such rates, and (d) that the rate to the intermediate point is just and reasonable under the circumstances. Alberta proposed an amendment intended to bring about this result.

CONCLUSIONS

The problem should be considered in the following manner:

To obtain the direct benefits of the lower costs of ocean traffic, the trader or consumer in Alberta, in the absence of competitive rail rates to the sea coast, must order his goods from Eastern Canada to Vancouver by steamship and then add the full cost of inland railway rates from Vancouver to such points as Calgary or Edmonton; but when the railways meet the ocean competition at the Pacific coast by publishing low rail rates from Eastern Canada they confront the Alberta trader or consumer with a different situation.

The distributor at the coast then has the benefit of both types of transportation, either ocean or rail; he has two strings to his bow; he can, if it suits him, use the slower ocean service at low rates or he can use the reduced rates of the railways and obtain rail transportation at less (and sometimes much less) than the normal railway rates. In reality he occupies a bargaining position between two competitors.

The distributor or consumer at Calgary or Edmonton now has no such advantages; he must pay to the railways either the full normal rate from the East to Calgary or Edmonton, or at best the combination of the transcontinental rate to the Coast and the full normal railway rate from the Coast to Calgary or Edmonton. He could in some instances obtain this combination by having his goods forwarded by rail to the Coast and reshipped back, but in practice the railway hauls the car only to Edmonton or Calgary and charges a rate equal to the combination, if it is lower than the published rate to Calgary or Edmonton.

As long as the competition exists the railways should be permitted to meet it. But when meeting the competition creates anomalies of the character indicated above and causes such long standing grievances, it is desirable that a solution be found which will enable the railways to meet the competition and at the same time eliminate, at least to a substantial degree, the anomalies created.

To apply transcontinental rates as a ceiling to intermediate points would in effect be placing such points as Calgary and Edmonton at the sea coast for rate purposes. Alberta does not suggest that extreme remedy. It says in effect that if a low rate is established to the sea coast then the rate to intermediate points such as Calgary and Edmonton should not be higher than a fair and reasonable rate established by comparison. This, according to Alberta, means that if the railways can make large reductions in a rate direct to the sea coast, on a basis related to the lower cost of steamship service and still make some profit, the rate to the intermediate points such as Calgary or Edmonton cannot be twice as high as the rate to Vancouver, without indicating an exorbitant profit.

A similar situation was dealt with in the United States by denying all long and short haul relief to the American railways, so that if they desire to participate in transcontinental traffic they must apply the transcontinental rate as a maximum to intermediate points.

Such a course is not called for here; it would probably result in the cancellation of some transcontinental rates from Eastern Canada to the Pacific Coast on which the railways have heretofore been afforded statutory protection, and on which communities in the Pacific coastal area have relied for many years — the low rates on iron and steel, for example. The railways might not desire to apply low coastal rates to the intermediate points (especially if the traffic were in greater volume to such intermediate points) and might in the face of a prohibitory "intermediate point" rule, decide to cancel the low rates to the coast.

RECOMMENDATIONS

On the main issue, it seems reasonable to conclude that when the railways give the trader and consumer at the Pacific Coast the benefit of fast railway service at rates that are very little more than ocean rates and thus provide them with two alternate services at almost the same price, the consumers in Alberta and other intermediate provinces are entitled to share in an equitable degree in the beneficial condition thus created by the railways.

The influence of any transcontinental rate from the East to the British Columbia Coast should be carried back in the rates to the intermediate provinces (including points in British Columbia east of the coast) on a basis not more than one-third greater than the transcontinental rate to the sea coast. This is a logical and simple solution to the matter, one that is readily calculated and

applied; it recognizes the influence on Alberta of intercoastal competition, but at the same time does not lead to the extreme conclusion that Alberta should have sea coast rates. It should also have a restraining influence on the railways in lowering rates to meet sea coast competition, because they will know that they can only obtain rates at intermediate points not more than one-third above the rate to the sea coast. If they choose to cut their rates in two to the Pacific Coast, they may charge only one-third more at the intermediate points, not 100 per cent more, as they now do in the case of canned goods and flannelette blankets to Calgary and Edmonton.

The effect of this proposal is indicated by the following examples of rates on carload lots which add a third to the table previously given:

Item	Present all-rail rate to Calgary or Edmonton	Present trans- continental rate to Vancouver	Rate to Calgary or Edmonton resulting from proposal
	Per 100 pounds		
Canned Goods.....	*V \$2.65	\$1.40	\$1.87
Structural Steel.....* $\left\{ \begin{array}{l} C \\ E \end{array} \right.$	*S 2.07 $\frac{1}{4}$ *S 2.36 $\frac{1}{4}$	1.32	1.76
Cast Iron Pipe.....* $\left\{ \begin{array}{l} C \\ E \end{array} \right.$	*V 1.73 *V 1.85	1.00	1.33
Cooking Oils.....	2.88	1.65	2.20
Flannelette Blankets.....	*A 6.58	3.31	4.41

Rates in the first and second columns are as of December 31, 1950.

*A — Any quantity, carload or less.

*C — To Calgary.

*E — To Edmonton.

*S — From Sault Ste. Marie, Ontario only.

*V — Combination on Vancouver.

The provinces east of Alberta will likewise benefit from the proposal which is outlined above, since the maximum rate to all points between the point of origin and the Pacific Coast area will be subjected to the ceiling of 133 $\frac{1}{3}$ % of the transcontinental rate.

The same principle should apply to eastbound competitive transcontinental rates.

This is all that can usefully be recommended in regard to this much debated question of transcontinental rates and their relation to rates at intermediate points.

The Railway Act should be amended to provide that when competitive transcontinental tariffs are published by the railways, such tariffs shall contain a provision that the rates to or from intermediate territory shall not exceed the transcontinental rates by more than one-third.

The legislation here recommended would bring about a change in the manner in which transcontinental rates have heretofore been treated by the Board. It has so far been held that the interests of shippers and consignees at intermediate points did not touch the principle of transcontinental rates: In re General Freight Rates Investigation, 33 C.R.C. page 127.

7. INTERNATIONAL RATES

There are three types of International Rates:

- TYPE I Rates on traffic between points in Canada and points in the United States in either direction;
- TYPE II Rates on traffic between two points in the United States through Canada; and
- TYPE III Rates on traffic between two points in Canada through the United States.

As to Type I: These rates must be published in printed tariffs which are "filed" with the Board of Transport Commissioners in Canada and with the Interstate Commerce Commission in the United States. In neither country are the railways compelled by law to agree to joint international rates; the agreement is voluntary, but when made, the tariffs publishing such rates must be filed. They then become subject to both the Railway Act of Canada and the Interstate Commerce Act of the United States. The Board controls the rate over such portion of the through rate as lies within Canada, and the Commission controls the rate over the portion in the United States.

The legal jurisdiction over such rates is thus divided, neither country having complete control over the entire rate in an international rate tariff.

As to Type II: The freight tariff must be filed with both regulatory bodies by virtue of the provisions of Section 339 of the Railway Act and the provisions of the Interstate Commerce Act.

As to Type III: The freight tariff must be filed only with the Board in Canada, as the Interstate Commerce Act does not require such tariffs to be filed with the Commission.

In this section Types I and III are dealt with.

Where there are no joint international rates the traffic is carried at the lowest combination of local rates.

The publication of joint international rates avoids the difficulty of ascertaining the lowest of numerous combinations of rates to and from various junction points, thus simplifying the quoting of rates. It also usually results in lower charges, thus stimulating international traffic.

THE PRESENT SITUATION

Where the amount of international traffic is large joint international rates are generally published, e.g. between points in Eastern Canada and points in the Eastern United States. On the other hand where there is a relatively small flow of international traffic there are few international rates, e.g. between Western Canada and the United States, and between Canada and the Southern and Western States.

Along the Atlantic and Pacific coasts of both countries many international rates are published because of the common interest of railways in meeting inter-coastal water competition.

As joint international rates are the result of the desire of railways in two different countries to institute them, and can only be published after an agreement, there is no jurisdiction in either regulatory body to compel their institution. The joint rates come about only where, in the opinion of the railways in the two countries, there is a sufficient volume of traffic to warrant them, or when to meet competition the railways of both countries agree upon and publish international rate tariffs.

When rate changes are authorized by the Interstate Commerce Commission, the practice is, and for a long time has been, for the Board to permit increases or reductions in the Canadian portion of the international rates (a) at the same time and (b) of equivalent amount as granted by the Commission on the United States portion of the rates.

General rate increases within the United States may, and usually do, take place before similar increases occur within Canada, and the amount of the increase in the United States may be greater than the increase in Canada. Consequently international rates are often raised more than domestic rates and the Canadian portion of the international rate is allowed by the Board even though the rate of increase is higher than on other rates in Canada.

Since a joint international rate is one unit, and not divisible at the boundary in so far as the shipper is concerned, the whole through rate must be advanced in both countries at the same time to keep the international rate on a parity with other rates within the United States. If this practice were not followed the American shippers would be discriminated against within their own country by the lower international rates on shipments to or from Canada. This may best be shown by an example: If Canadian railways did not increase their rates on lumber from Vancouver to Boston simultaneously with the American railroads' increase on lumber from Seattle to Boston, mill owners at Seattle would complain of loss of markets and unjust discrimination. Railways in the United States, to protect shippers along their lines as well as to protect their own revenues, would then withdraw their concurrence in the joint international rate from Vancouver to Boston. The rate which would then apply from Vancouver to Boston would be the relatively higher one, namely the sum of the local rates. Canadian shippers would be out of the Boston market and would be worse off than if Canadian railways had advanced their rates exactly as American carriers had done. Another, although different example: freight originating in Trois-Rivières, P.Q., destined to Buffalo, N.Y. may be hauled by a Canadian railway and delivered to American lines at Montreal, P.Q., Prescott, Ont., or Black Rock, N.Y. The through rates by the various routes are now equal. If an increase were permitted only on the United States portion of these through rates, the increase in cents per hundred pounds would not be the same over the various routes because the mileage within the United States differs. The total charges and therefore the relationship between the various gateways would be disturbed, and the flow of trade across the border thrown into a state of confusion.

COMPLAINTS AND SUGGESTIONS

The complaints and suggestions made may be summarized as follows:

- (1) There are many joint international rates in the East and few in the West;
- (2) The Canadian railways' portion of international rates is too high and should be reduced;
- (3) The present level of some international rates is prohibitive and jeopardizes export trade, particularly in pulpwood;
- (4) The Board permits the increases as a matter of routine, does not hold hearings in respect to them and does not exercise sufficient control over them;
- (5) Proportional rates should be established in the West between interior points in Canada and international gateways to foster trade with all sections of the United States; and
- (6) A closer liaison should be established between the Board and the Interstate Commerce Commission either informally or through a joint international board.

The Railways expressed the following views:

(1) That no legislative changes would be effective, because the American railways would simply refuse to join in tariffs if the rates were not raised to the same level in Canada as in the United States;

(2) That the rates must be a matter of negotiation between the railways involved; and

(3) That the continuity of joint international rates is necessary for the maintenance of this traffic through all gateways.

The alternative would be to move this traffic on combination rates which would not benefit shippers or consignees.

CONCLUSIONS

1. No one was able to suggest any legislative remedy which would cure any of the complaints, and as far as can be determined all admit the importance and necessity of joint international rates to shippers, consignees and railways.

2. The Board's present practice of permitting the increases granted by the Interstate Commerce Commission to be applied on the Canadian portion of the through rate appears to be the only feasible one to follow. To do otherwise would mean the withdrawal by American railroads from joint international rates. That this is evident is perhaps best illustrated by the fact that Boards of Trade in Montreal and Toronto have actually joined in applications to the Board favouring this procedure in order to preserve the continuity of international traffic.

3. While the publication of joint international rates between all points in Canada and all points in the United States would be most desirable, it cannot be brought about by legislation or regulation in Canada for the simple reason that American carriers cannot be compelled to join in international rates against their will.

4. Publication of lower proportional rates between interior points in Canada and the international boundary on traffic destined to or received from the United States would only result in reducing railway revenue in Canada without a corresponding reduction by proportional rates within the United States.

5. The paucity of joint international rates in the West as compared with the East is something over which the Board has not and cannot be given any effective control by legislation.

6. Reduction by Canadian railways of their portion of the through rate would not benefit Canadian shippers or consignees, but would simply reduce the revenue of Canadian railways and thus place a higher burden on other rates.

7. It does not appear that the creation of a Joint International Board would be either practicable or desirable. This proposal has, in the past, been considered by American and Canadian authorities and been discarded by them. No new or additional reasons have been advanced which warrant a recommendation to set up such a body.

8. During the discussion of International Rates Alberta proposed an amendment to Sec. 338 of the Railway Act which would compel Canadian railways to apply to traffic moving wholly within Canada, lower rates corresponding to those which might be brought about by the application of a combination of rates between two points in Canada on traffic passing through the United States. Legislation which would have the effect of having a combination of American rates (over which the Board has no control and which are not filed with the Board) govern a normal Canadian rate, cannot be recommended. Competitive or other conditions in the United States may affect the American rates, but if such competitive or other conditions do not exist in Canada, it would not seem

proper to have the American rates in such a case act as a ceiling for the Canadian rates as Alberta's amendment proposes. Even within Canada competitive rates in one region do not govern non-competitive rates in another. The complaint to which the proposed amendment is directed seems really to arise out of the situation in respect to transcontinental rates within Canada. This latter problem is dealt with elsewhere in this Report.

RECOMMENDATIONS

No legislative amendment is to be recommended with respect to international rates or to the establishment of a Joint International Board to deal with them or to alter the Board's present practice in dealing with such rates.

8. EXPORT AND IMPORT RATES

These are Special rates, usually lower than domestic rates, and are made to encourage export and import trade through Canadian ports.

Fundamentally they are competitive because they are designed to place various seaports, shippers through these ports and the railways which serve them, as nearly as possible on a basis of equality with ports, shippers and railways in the United States.

The Port of New York has many advantages over its competitors such as Montreal, Philadelphia and Baltimore, and if the latter ports are to participate in foreign shipping, the railways serving them must give shippers along their lines favourable rates. After long and bitter rate wars in the past the railways agreed some years ago on a system of differentials, which, broadly speaking, equalized disadvantages of various ports as compared with New York.

The Export rates to Philadelphia are two cents per hundred pounds less on freight generally, and one cent less on grain and grain products than the Export rates to New York. On this basis New York is content to allow Philadelphia to obtain its "fair share" of oceanic trade.

Export rates to Montreal are normally the same as to Philadelphia. Export rates through Halifax and Saint John are normally the same as they are to New York. The practical effect of the relationship is that normally Montreal takes Philadelphia rates which, as stated, are two cents lower generally than to Saint John and Halifax, which take the New York rates. Import rates are normally made on the Baltimore basis.

To preserve relationships, rates on export and import traffic are altered in Canada in precisely the same manner as export and import rates are altered in the United States, and in recent years the normal export rates have been increased to New York, Halifax and Saint John, and also to Montreal and Philadelphia, so that the two-cent differential relationship is maintained.

However, the tariff provides that the normal export rates, which it sets out, are to be superseded by the domestic rates plus port charges when the sum of these latter is less. In such case the domestic rate (plus port charges) becomes in effect the export rate.

Since 1946 rates on domestic traffic within Canada to Montreal have been increased less than corresponding domestic rates in the United States. The result is that the domestic rates plus port charges on shipments to Montreal have become with a few exceptions the export rates to that port. Hence by the application of the Canadian domestic rates to that port the differential under Saint John and Halifax has become much wider than two cents.

The Maritime Board of Trade alleged that the two-cent differential over Montreal to Halifax and Saint John constituted a "differential relationship"

which was disturbed by the recent increases on domestic rates. It was submitted that this relationship should be restored by reducing the export rates to Halifax and Saint John so that the differential to these two ports over Montreal would be only two cents per hundred pounds instead of 21 cents, as it was for example, on Fifth Class traffic from Toronto at the 12th January, 1949. (The Canadian and American rates have changed since that date.)

The railways stated that the lowering of export and import tolls through Halifax and Saint John would disturb long standing and mutually satisfactory inter-relationships between various ports in Canada and the United States. If such rates were lowered the American railroads could and undoubtedly would retaliate by withdrawing the joint rates on exports and imports to and from the United States via Saint John, Halifax and Montreal. They said such action would be prejudicial to Canadian ports generally and to the ports in the Maritime Provinces in particular. They pointed out that the situation arising out of the differences in increases in domestic rates in the United States and Canada was one beyond their control, and this had brought about the greater spread in the rates between Montreal, Halifax and Saint John.

CONCLUSIONS

1. American and Canadian railways have reached a tacit understanding with respect to export and import rates after bitter rate wars, and port relationships have been adjusted accordingly. It is well understood by the American railways that Canadian railways can use normal domestic rates plus handling charges as a basis for export rates and this will incite no retaliation, but if normal domestic rates were abandoned for distances east of Montreal of from 500 to 800 miles and replaced by an arbitrary of two cents with the intention of diverting traffic to Canadian maritime ports (and this is the effect of the Maritime proposal) then the agreement of American railroads could no longer be counted upon. The result would almost certainly be a rate war in which all Canadian Atlantic ports would find themselves in a very vulnerable position.

2. Rate relationship in export and import rates between ports in Canada and the United States developed over a long period of years should not be disturbed, and the present practice of the Board in maintaining such relationships should not be altered.

3. The increase in the differential between Maritime ports over Montreal is not due to a change in port relationships in export and import rates, but rather to increases in domestic rates being less in Canada than in the United States.

4. It is to be observed that the Board in dealing with these rates follows the same practice as that adopted by the Interstate Commerce Commission. In the recent Canadian increase cases the Board has specifically excepted from such increases "Export and Import rates to and from Canadian ports which are on a parity with rates to or from United States ports".

No amendment is recommended in regard to legislation governing export and import rates.

9. INTERLINE RATES

An interline rate is one which applies between stations on the lines of two or more different railway companies. As a rule these rates are less than the sum of the local rates but more than the rate for the same distance over a single line of one company.

The justification given for the higher rate is that there are additional clerical, switching and other costs when two or more railway companies are involved.

The complaints and suggestions may be summarized as follows:

1. That there are insufficient facilities at interchange points and that these should be established at all points where two or more railways serve them;
2. That all interline rates should be on a single line basis;
3. That railways should be compelled to quote joint interline rates over the most direct routes;
4. That the lack of joint rates makes the resultant combinations in certain instances unreasonable; and,
5. That in some instances joint rates are almost as high as the combination of local rates and are therefore excessive.

The railways' position with respect to the complaints is as follows:

1. The establishment of facilities at all interchange points would increase the capital costs and operating expenses without significantly assisting the public through better service or lower tolls. Essential facilities are built whenever the volume of traffic is large enough to warrant the expense, and joint rates are then published;
2. To put all joint rates on a single line basis would reduce the revenue of the railways, would be contrary to long and well established rate-making practice and would not take into account the additional costs to the railways incurred in joint hauls;
3. To compel the railways to quote joint interline rates over the most direct routes might mean compelling a railway to short-haul itself, and would also result in the breakdown of some existing single-line rates;
4. If the combination rates are unreasonable, the Board can order joint rates and fix the tolls and determine the route; and,
5. If joint rates are unreasonable the Board can also deal with the matter.

CONCLUSIONS

1. As to provision of facilities, the Board has ample power under Sections 312 and 313 of the Railway Act to deal with all cases which come before it. Each case must be judged on its own merits, and the Board is the proper forum.

2. Regarding joint interline rates, the Board, under Sections 336 and 337 of the Railway Act, has power to order joint rates, to fix the tolls and to determine the route, and under Section 325 of the Railway Act the Board has power to fix, determine and enforce just and reasonable rates.

3. The Board has held that if one carrier has a route over its own rails which is reasonable and practicable, joint tariffs are not required. The determination of matters of this kind should be left to the Board as each case must be decided on its own merits and after a careful examination of all pertinent facts.

4. The question of increased costs for joint hauls is and must be one for the Board to decide in each case. Obviously if it costs the railways more to carry goods over the lines of two railways than it does over the lines of one railway, the companies involved should not be expected to publish a single-line rate. The amount of the additional costs, if any, to be added is again a matter for the Board to determine in each case.

RECOMMENDATION

The proper procedure would appear to be that in any case where joint interline rates are charged the burden should be placed on the railways to show that additional costs are involved, and that they should be permitted to charge joint rates higher than on the single line basis only when they can discharge this burden.

Section 336 of the Railway Act should be amended by adding thereto:

- "4. Where the rates in the joint tariff exceed the rates in a single-line tariff for the same or similar distances in the same locality the burden of proof shall lie upon the companies to show to the satisfaction of the Board that there are greater costs involved in the joint movement, and only in such case may the rates in the joint tariff be permitted to exceed the rates in the single-line tariff."

10. DEVELOPMENTAL RATES

The only proposal made in regard to these rates was by the Province of Alberta which proposed that the following new Section be added to the Railway Act:

"The Company may, for the purpose of assisting an industry or of developing traffic which otherwise might not exist, establish tolls lower than the tolls for traffic of the same description: Provided that such lower tolls shall not remain in effect for a period of more than three years without the approval of the Board, and the Company shall have the right to cancel or amend such lower tolls at any time."

The Railway Companies objected to the proposed amendment in their briefs and argument. The Canadian National Railway brief states:

"The Canadian National considers that the matter of publishing special rates to assist or develop industry should be left to the discretion of the Railways and that there should be no restrictive or mandatory legislation in this regard. This method has proven satisfactory in the past and there seems no reason why it should not work satisfactorily in the future."

Counsel for the Canadian Pacific Railway Company said:

"Canadian Pacific is opposed to the proposed legislation, because it would permit preferential rates to new industries and the imposition of unjustly discriminatory rates on existing industries and cause industrial dislocation and wasteful transportation services. Under the proposed legislation the revenue position of the Railways would also be adversely affected."

CONCLUSIONS

Developmental rates are usually initiated by action of the railways who grant a special commodity rate to new industries or to existing industries which are developing new lines of traffic. In these cases care is said to be taken by the railways to ensure: (a) that all such rates are compensatory, and (b) that all industries are treated on the same basis of equality to prevent charges of unjust discrimination or undue preference. There does not appear to be any objection to this practice. Nobody suggested that developmental rates were non-compensatory or that the railways were practising discrimination by the use of them.

There is, therefore, no reason to discourage the present practice nor to recommend legislative restrictions upon it. The initiation of these rates should be left with the railways.

11. EXPIRY RATES

These are rates which are limited by a date of expiration in the published tariff. They have been used by the railways to meet two dissimilar situations: first and principally, as seasonal water and truck competitive rates, and second, as a concession to particular traffic such as seed grain and livestock for exhibition.

Complaints were made in regard to expiry rates granted as a concession, which are continued from year to year, over a long period of time and then allowed to expire suddenly, whereupon the higher normal rates become effective. This is said to create hardship because shippers have come to regard these rates as permanent in character.

It was contended that while these expiry rates might be made subject to general freight rate increases, they should not otherwise be altered without an order of the Board after a public hearing.

The railways contended that, because of financial needs, they had been forced to raise all rates, including these expiry rates, and that the adoption of restrictive measures in regard to these rates would unduly hamper them in maintaining a proper and necessary flexibility in the making of rates.

CONCLUSIONS

The very nature of these rates is that they are to begin at a certain date and terminate at another. If the expiry date set out in the published tariff is to be considered ineffective and the rate is to remain in force until otherwise ordered by the Board, the railways, in granting such a rate, would be putting the period of their duration out of their own hands. Such a state of affairs would not be conducive to the granting of these rates which no doubt are beneficial to shippers.

There is no useful legislative amendment to be recommended in this matter.

12. RATE GROUPING

When rates to or from all points within an area from or to a point outside that area are identical that area is said to constitute a rate-group. Clarity demands that each of four types of rate-group should receive separate consideration.

The first type exists when rates are fixed in blocks of a number of miles. Grouping of this sort avoids a multiplicity of point to point rates and is a common feature of a rate structure. It is consistent with proposals for uniform rate scales throughout Canada which have been discussed elsewhere. Blocks are usually short when the length of the haul is short, and long when the length of the haul is long. The technical difficulties involved in this type of grouping are not of concern here.

The second type is compelled by carrier competition, usually that of a carrier by water. As competition is a recognized exception in any plan for uniform rate scales, provided the rules, if any, applying to competitive rates are met, this type of rate-group presents no special difficulties.

The third type is created for other purposes. For example, if an industry is diffused throughout an area, it may be considered desirable to treat all competitive enterprises engaged in that industry alike when quoting rates to or from points outside that area.

The fourth, a variant of this type, exists when adjacent territory not itself affected by carrier competition is included for convenience in a group designed primarily to meet such competition.

It is with rate-groups of the third and fourth types that submissions made to this Commission have been concerned. Proposals for uniformity might outlaw rate-groups of these types or might make express exception for them. If they are permissible in the future, as they have been in the past, they will inevitably be demanded from time to time in various regions, on the ground that concessions made in one part of the country should, under appropriate conditions, be made in all parts. Two cases of this sort were referred to by counsel for the Province of Alberta.

Alberta asked that rate groups be established in Western Canada; that Magrath, Taber and Lethbridge be grouped together for the purpose of making the rates on canned goods to Edmonton, and that Calgary, Red Deer, Alix and Edmonton be grouped for making rates on butter to Eastern Canada.

It is alleged that the method of making one large group (the Montreal-Windsor-Sudbury group) in the East, while refusing to make groups in the West, is a discrimination against the West.

Prince Edward Island is generally divided into two zones for rate-making purposes: an inner zone extending from Borden to Summerside and Charlottetown, and an outer zone comprising stations on the lines on both sides of the inner zone. The provincial government asked that one zone be established for the whole province. It would be most desirable to have this request complied with.

New Brunswick, on the contrary, asked that the Minto coalfields in that province be grouped separately from those in Nova Scotia.

In Western Canada the rates on butter and on canned goods are based on the class rate groupings, and these rates apply from point to point within 10 or 25 mile blocks depending upon the length of haul.

With respect to Prince Edward Island, the Board of Transport Commissioners now has under consideration an application for the consolidation into one zone of the two now in existence on the Island, but this application has not been set down for hearing.

The Minto coalfields in New Brunswick are already grouped separately from those in Nova Scotia and the complaint was made under a misapprehension. The rates from Nova Scotia are water competitive and therefore approximate the revenue per ton of the Minto rates, thus causing the complainants to believe that the rates were grouped together.

The Province of Alberta suggested that the freight rate structure should recognize the principle of rate-groups, i.e. the principle of establishing common rates from the same production area to common market points. No particular legislation was asked for.

CONCLUSIONS

1. The submission of the Province of Alberta is, in substance, that any plan for the equalization of rates which the Board of Transport Commissioners may approve, should permit of exceptions being made for rate-groups designed to place all competitive enterprises within some suitable area on an equality in respect of the freight rates charged for transporting their products to points outside the area. There is no legislative enactment forbidding the formation of such rate-groups, and Order in Council No. 1487 does not suggest that they would be inconsistent with the revision of the rate structure contemplated by it. Rate-groups of this type inevitably involve some marked discrimination against points immediately outside the area which they comprise. They are, therefore, best suited to areas with clear-cut natural boundaries. The purposes which this kind of rate-groups could serve can be achieved to some extent by other methods, which may well be better suited to the actual conditions of Alberta.

2. As has been pointed out in discussing competitive rates, it does not appear that publishing a competitive rate from an area where carrier competition exists would require the establishment of the same rate from a neighbouring area where no competition exists.

3. The Royal Commission on Coal which investigated the position of the producers in the Minto field in 1946, advised them to discuss their complaints with the railways and, if necessary, pursue them before the Board. No evidence was submitted that this had been done.

4. The use of 766 miles, which is the Edmonton-Vancouver distance via the Canadian National Railways, for fixing the export grain rates from the Prairies to the Pacific coast, is not regarded as a "constructive mileage". It is in fact an approximate average of the distances from Calgary and Edmonton to

the Vancouver and Prince Rupert port areas. No one complained about this method of computing the westbound export grain rates, and there appears to be no reason to change it. This is mentioned in order to make clear that the general recommendation against the use of "constructive mileages" is not intended to apply to this situation.

RECOMMENDATION

No legislation is recommended on the subject of rate-grouping; but it is suggested that the situation which has led to the demand for larger rate-groups may be one which the Board can deal with by the use of a uniform scale of rates involving distance grouping, including, in the case of very long hauls, large rate groups of 100 or even 200 miles in extent, in addition to the rate groups of 10, 20, 25, 40 or 50 miles which now exist for shorter distances.

13. TAPERING OF FREIGHT RATES

The progression of freight rates in regard to distance is one of the most important factors in the rate structure. It is also one of the most difficult and technical matters in the fixing of rates. The tapering of rates is the process by which rates mile for mile are less for longer than for shorter distances or rates per ton-mile decline as mileage increases.

As already pointed out, transportation in Canada requires the movement of traffic interprovincially, and even within a province, for great distances. A haul of 4,506 miles is possible between two points on one railway in Canada (between St. John's, Newfoundland, and Prince Rupert, British Columbia).* The average length of haul of traffic between Eastern and Western Canada is in the neighbourhood of 1,800 miles. The average haul of all traffic on the Canadian railways in 1949 was over 400 miles per shipment. In the United Kingdom in 1948 it was only 72 miles.

The tapering of rates is of special interest to the Western Provinces, as they are an immense area stretching 2,000 miles from Port Arthur, Ontario, to Prince Rupert, British Columbia. Since the Western Provinces are largely dependent on rail transportation the tapering of freight rates for these long distances is of great concern to them.

Another part of the same problem, also of great interest to the West, is the tapering of rates in relation to the freight classification. There are ten broad classes in the freight classification, the highest valued goods being included in the first class and the lowest in the tenth class. The grading of the freight rates in a descending ratio from first to tenth class is of special interest to Western Canada, because a large volume of shipments of their basic products is comprised within the lower classes. It is therefore of great concern to them, for illustration, whether the tenth class rate is 30 per cent of the first class rate, or 25 per cent.

It should be noted in reading the following paragraphs that the term "rapid" or "greater" tapering of rates means that the rates for longer distances are relatively lower; on the contrary "low" or "less" tapering results in higher rates for the longer distances—in other words, the rates do not "taper off" so rapidly as other rates.

The principal complaints were made with respect to the "class" rates, i.e. rates which are made subject to the ten classes of the Canadian freight classification. Other complaints, however, were made with respect to the tapering of "commodity" rates, which are special rates lower than the class rates given on certain specific articles.

*Including 100 miles by sea.

The complaints and suggestions may be summarized as follows:

1. That in constructing a new uniform rate scale for the whole of Canada, the tapering of the class rates which exists in Western Canada is preferable to the tapering of class rates in Eastern Canada.
2. That the class rates on traffic moving between Western and Eastern Canada have a distorted scale of tapering, with the result that these through rates are higher than if the tapering now used locally in Western Canada were extended through to the East.
3. Saskatchewan and Alberta complained that the "terminal" class rates between those provinces and the head of the lakes on both eastbound and westbound traffic do not taper off as rapidly as between Manitoba and the head of the lakes.
4. The Western Provinces complained that some "commodity" rates do not taper sufficiently as distance increases.

The Canadian Pacific in connection with its proposals for equalization of rates submitted that the relationship between the classes (i.e. the tapering from first class for classes two to ten) should be established on the following basis:

"It is proposed that the following relationship shall be established:

First Class.....	100%	Sixth Class.....	40%
Second Class.....	85%	Seventh Class.....	35%
Third Class.....	70%	Eighth Class.....	35%
Fourth Class.....	55%	Ninth Class.....	40%
Fifth Class.....	45%	Tenth Class.....	30%"

With respect to tapering for distance the Canadian Pacific said:

"The third step is to work out the appropriate rate of taper due to distance. This will probably be done by applying to the equalized first class rate a minimum for distances of 40 miles and less and by adding amounts for each five-mile block up to and including 100 miles; for each ten-mile block up to and including 500 miles; and for each twenty-five mile block up to and including 3,000 miles.

"After study it was not found practicable to take the average rate of taper of the existing Eastern and Western standard mileage scales. Neither is it deemed fair, as suggested by Alberta in its brief, to accept the rate of taper in Western territory as the rate of taper on the equalized scale. This is because the rate of taper on the Prairie standard scale is much sharper than in the Eastern standard scale."

It will be noted that in the Canadian Pacific proposal classes six and nine are the same, and seven and eight likewise. There does not seem to be any object in making different numbered classes with the same rates.

CONCLUSIONS AND RECOMMENDATIONS

A suitable rate of tapering for the entire country should be an integral part of a uniform class rate scale.

The progression of the scale must, of course, be properly constructed, both as to (1) tapering for the longer distances over the shorter distances and (2) tapering, or relationship, between the classes.

From what has been said herein, it is obvious that these two conditions should not be combined to produce the compound reduction which would occur by adopting (1) the most rapid tapering for distance and (2) the most rapid tapering between the classes. The effect of such a combination would tend to be unduly prejudicial upon railway revenues.

It therefore appears that there should be incorporated in the new scale a compromise between the higher western rates with their more rapid tapering

of classes, and the lower eastern rates with their less rapid tapering. A scale based on such principles would eliminate the anomalies to which attention has been drawn.

No legislation is required to bring about these results. The general freight rate investigation which the Board is now conducting will include the question of the tapering of rates and classes.

14. STOP-OFF PRIVILEGES

Railway companies have voluntarily provided certain stop-off privileges on a number of commodities. Such arrangements have been considered as concessions to meet special circumstances in the case of certain movements of traffic.

The origin of the privilege in Canada is to be found in the handling of the grain crop of the Western Provinces. The stop-off privilege for milling grain in transit was inaugurated primarily for the purpose of encouraging the milling of grain and the establishment of industries for the preparation or manufacture of by-products in Western Canada.

The object of the privilege is to enable the shipper to have his goods stopped in transit at some point to be milled, stored for inspection, branded, sorted, cleaned, etc., and to be reshipped from that point; but instead of being subjected to two local rates, the goods are carried at an ultimate through rate plus a charge for the stop-off. Apart from this object the stop-off privilege would have no reason to exist.

These concessions have been extended and today the tariffs of railway companies in Canada provide for stop-off privileges at specified points, in the following cases among others:

- Apples for storage and inspection
- Butter for storage, inspection and re-shipment
- Canned goods for completion of load
- Cheese for storage, branding or inspection and re-shipment
- Lumber for dressing, drying, re-sawing, sorting and re-shipping
- Eggs for storage, inspection and re-shipment
- Grain for milling, cleaning, bagging, etc. in transit
- Living poultry for completion of load in transit
- Livestock for completion of load in transit, and
- Potatoes for bagging, sorting and re-shipment.

It will be observed that these privileges apply in most cases to the movement outbound from the producing centres to the large wholesale or manufacturing markets or for export.

Prior to 1919 applications involving the question of stop-off privileges were dealt with upon the basis of whether or not the granting of such privileges in some cases, and the withholding in others, constituted unjust discrimination within the meaning of the Railway Act, and the Board held that it was entirely within the discretion of the railways to grant or withhold stop-off privileges, and that it was without jurisdiction to direct that the privilege be given unless unjust discrimination were established. In the Railway Act of 1919 clause (e) was added to sub-section (1) of Section 312. This clause provides that the company shall, according to its powers, "furnish such other service incidental to transportation or as is customary or usual in connection with the business of a railway company, as may be ordered by the Board".

The Board has held that clause (e) of sub-section (1) of Section 312 has not extended its jurisdiction by empowering it to compel railway companies to grant a stop-off privilege where no unjust discrimination had been shown to exist, and

that the arrangement was wholly a privilege and not a right. A shipper to bring himself within said clause (e) must show that the service he is applying for is a customary or usual service in connection with the business of a railway company.

In the case of *Western Livestock Shippers Association versus C.P.R. and C.N.R.*, 51 C.R.T.C., page 321, the Board said "the granting of transit privileges is a managerial prerogative" and the Board's intervention is limited to any remedial action "necessary to remove unjust discrimination or unreasonableness".

The complaints made were: (a) that there are too few of these privileges; (b) that they are only granted in the discretion of the railways; and (c) that, as the Board has no power to equalize economic conditions, there is no appeal to the Board when a railway refuses to grant a new stop-over arrangement proposed by a shipper, except on a showing of unjust discrimination on the ground that some other shipper of similar goods has received the privilege.

The complaints with respect to this matter came from shippers in Manitoba and Alberta. One processing firm in Winnipeg complained that it should have a processing-in-transit privilege on fresh eggs to be shelled and frozen-in-transit. The Southern Alberta Sheep Breeders Association contended that there should be a stop-off arrangement for completion of carloads of wool in transit. It was claimed that wool is now shipped in less-than-carload lots to concentrating points, where a sufficient quantity is accumulated for a carload. The privilege suggested in this case is that a car be started at some point with a partial load, and stopped-off at one or more other points to pick up additional small quantities until the car is filled.

The position taken by the Province of Alberta is summed up in a statement of its Counsel as follows:

"The present situation with regard to stop-off and in-transit privileges is that, subject to the power of the Board to remove discrimination, it is the prerogative of the railways to grant or refuse these privileges.

"Today, if a shipper seeks either of these privileges he must go to the railway and ask for it. If the railway refuses to grant the privilege, the shipper has no recourse to the Board on the ground of the reasonableness of his request. The Board has said that such a matter is the railways' business and if they say no that is the end of it.

"We want that situation changed. We believe that there should be recourse beyond the refusal of the railroad. We ask this Commission to recommend that the Board of Transport Commissioners be required to decide, on the basis of reasonableness, the application of any shipper for a stop-off or an in-transit privilege; the application for such privilege having been first made by the shipper to the railways and refused by them."

CONCLUSIONS

The reasons for the establishment of stop-off (or in-transit) privileges are stated above, and it must be borne in mind that these privileges are concessions made by the railways.

To carry out the proposal suggested by Alberta would lead to the introduction of claims for further stop-off privileges on the grounds of analogy to existing cases and in turn to reductions of revenue to the railways. It is presumed that the railways are competent to determine what stop-off privileges are in their interests and it would be dangerous to permit the Board to compel them to act against their interests and to commit them to indefinite losses.

15. RATES GRADUATED ACCORDING TO VALUE

Rates which vary with the price of an article at any given time are rarely found in the Canadian freight rate structure. The principal rates of this kind are on ores of antimony, copper, gold, lead, molybdenum, silver, zinc and mica,

which are classified in the Canadian freight classification as 7th Class when the declared value does not exceed \$100 per ton. For a distance of 100 miles the 7th Class rate was 20 cents per hundred pounds (or \$4.00 per net ton).

Mining companies claimed that this rigid classification was unsatisfactory and an agreement was made for special commodity rates in British Columbia which were graduated in accordance with the following table:

Not exceeding the Value per ton of	Rate for 100 miles (Per net ton)	Not exceeding the Value per ton of	Rate for 100 miles (Per net ton)
\$ 5	\$1.60	\$ 50	\$3.00
10	1.70	60	3.30
15	1.80	70	3.60
20	1.90	80	3.90
25	2.10	90	3.90
30	2.50	100	3.90
40	2.70		

The values are ascertained by smelter assays based on the selling prices of the metal at the time of out-turn from the smelter.

The only complaint with respect to this matter came from the Mining Association of British Columbia which contended that originally this tariff pricing method may have had merit but that the increased prices of metals, coupled with the 21% increase (now 45%) had caused a double increase and that "the mines of British Columbia appear to be paying a greater share of transportation charges than is just and reasonable, compared to what other shippers are paying".

The association, therefore, asked that the "escalator clause" be removed from the tariffs.

The position of the railways is that they need not have charged less at any time than the 7th Class rate as fixed by the Board; that they gave the reductions originally to help the mining industry in times of low prices; that the industry had enjoyed such benefits for many years; that when prices of metals increase it is only equitable that the shippers should pay rates in accordance with such increased values, and that even with the 21% (now 45%) increase, the increased value of the ore was much greater than the relative increase in freight rates.

CONCLUSIONS

Presumably the rate would revert to the 7th Class basis (unless otherwise ordered by the Board) if the escalator clause providing for lower rates on ores valued at less than \$100 per ton were cancelled; it does not appear therefore that such cancellation would help the mining industry.

The percentage increase in freight rates on the rate for 100 miles on ore originally valued at \$25 per ton, which is now valued at \$50 per ton is as follows:

	Freight Rate at \$25 per ton	Freight Rate at \$50 per ton
Original Rate.....	\$2.10 per ton	\$3.00 per ton
Plus 21% equals.....	\$2.54 " "	\$3.63 " "
Plus 20% "	\$3.05 " "	\$4.36 " "

The total compound freight rate increase is therefore \$2.26 per ton (i.e. from \$2.10 to \$4.36) compared with an increase of \$25 per ton in value of the ore.

The complaint in reality is that the present rates are unreasonable. The adjustment of alleged unreasonable rates is a matter entirely within the functions of the Board. The mining association at the time of the hearing had neither taken their complaint to the Railways nor to the Board. Information obtained since the complaint was made shows that one mining company submitted a case to the Board on the ground that it could not continue to mine ore and ship it at the existing railway rates. As a consequence, the railway jointly with the mining company made an agreement which resulted in a general adjustment of the rates and the case was withdrawn from the Board. The agreement, however, still operates with an escalator clause.

16. INDUSTRIAL LOCATION

(Critical Relationship of Freight Rates)

Industries are usually located at points which are considered by those who establish them to be the best location having regard to sources of raw material, water and power supply, labour and markets. The availability of transportation and the level of freight rates have a definite bearing upon location. This subject in its broad aspects would require lengthy treatment. It is dealt with here only in the one concrete form in which it was presented to the Commission, viz. the presentation made by Counsel for Alberta.

Alberta contended that the relationship between the rates on the raw material and the finished product should be such as not to discourage the location of processing plants near the source of production of the raw material.

In the submissions made by that Province there were several examples given of rate relationships which it was alleged discourage "producer location". The example with which Alberta is most concerned is relationship between rates on live cattle from Alberta to Vancouver, Winnipeg, Toronto and Montreal on the one hand and those on packing-house products from Alberta to the same points on the other. It is alleged that the rates on livestock are low in relation to the rates on the finished products, and this encourages the shipment of the livestock and discourages the processing in packing plants at Calgary and Edmonton.

Alberta referred to a relationship in freight rates which would not discourage producer location as the "critical" relationship, one which, if properly balanced, would be neutral in its effect upon the location of industries.

The Province maintains that the Board of Transport Commissioners should, in fixing rates, take into account this critical relationship, but that it does not do so.

Alberta asks that the Railway Act be amended to provide that the Board shall upon the application of an interested party establish rates on raw materials and processed products so that the relationship between the two shall not *per se* hinder the processing of the raw material at or near the point of production of such raw material. Alberta's proposed amendment is as follows:

"Section 321A

The Board shall, upon application by an interested party or parties prescribe or direct the company to establish tolls on raw materials and tolls on products made in whole or in part from such raw materials, in such manner that the relationship between the tolls on raw materials and the tolls on products made therefrom shall not *per se* hinder the processing, manufacture or other conversion of such raw materials at or near the point of production of such raw materials: Provided that the onus shall be upon the applicant to satisfy the Board that the existing relationship between the tolls hinders *per se* the processing, manufacture or other conversion of such raw materials at or near the point of production of such raw materials."

The cause of the complaint in the example of livestock and meat products is said to be the low rates on livestock resulting from a reduction made by the railways in 1921 to assist the livestock industry in that trying period. The rates on processed products were not similarly reduced at that time. The railways recently filed tariffs which were to have become effective October 2, 1950, putting an end to the reduction. Complaints against this intended increase were immediately filed by many organizations in the West including the Governments of the Prairie Provinces. Public hearings were held and the Board granted the increase which was made effective from December 15, 1950. This increase was unwelcome to the western livestock industry, but it diminished the imbalance between livestock and meat tariffs.

The Board has considered the question of relationship between rates on raw material and finished products on previous occasions. The Board's views in the matter were clearly stated in the case of *Alberta, Saskatchewan et al v. C.P.R. and C.N.R.* reported in (1928) 18 J.O.R. & R. 356. The chief commissioner in that case, in referring to the contentions made by the western packers, Gainers Limited, that there should be a constant relationship between the rates on livestock and packing-house products and hides from Edmonton eastbound to Toronto, Montreal and Chicago and westbound to Vancouver and Seattle, said:

"While I am not convinced of the necessity, nor indeed the propriety, of establishing a percentage relation between these two sets of rates, nevertheless it is not difficult to see that a condition could arise in which special rates on livestock being accorded to eastern packing companies, would operate to the disadvantage of western packers in marketing their finished products in competition with eastern packing houses."

He went on to say:

"The equalization above contended for would involve a rearrangement whereby the combined rates on livestock in, and on meat and packing-house products outward, would produce through transportation charges equal for all Canadian packers. As a matter of tariff construction this would seem to be impracticable, and would resolve itself into an attempt to create such a condition regardless of the reasonableness of the rates per se, or of the anomalies that would be created."

It would appear from the foregoing that the Board has considered the matter and has recognized the very problem raised by Alberta, and felt, at least in 1928, that there were serious difficulties involved in fixing a definite relationship between the rates on raw materials and finished products.

On its face the amendment poses numerous practical difficulties, for example: (1) when is a product a "finished product"? A finished product to one producer may not be "finished" to another, e.g., rough lumber may be a finished product at a sawmill but may be the raw material for a woodworking plant; is there to be a critical relationship established in each case? (2) How is one to determine whether or not the relationship between the rates "hinders" or "discourages" the processing of the raw material at or near the source of production? It might hinder or discourage one producer but not another. (3) What will constitute "at or near the point of production"? The relationship might hinder production at one point and not at another which was "near" but not "at" the point of production.

The difficulties are pointed out, perhaps as aptly as possible, in the case of *John Morrell & Co. v. New York Central Railroad* 104 I.C.C. at page 138 where Commissioner Hall said:

"I am not persuaded that rate relationship between live animals and the various products of animals can be based on fact. A mixed carload of fresh meats, all moving at the same rate, may contain beef, pork, mutton, veal, and lamb cut from animals which when living moved at different rates. Still less can glue, fertilizer, bristles, hair, hides, pelts, wool, leather, ham, bacon, lard, soups, and neat's foot oil—to name but a

few of the hundreds of articles which move in commerce and once formed part of the live animal—be assigned rates which bear any necessary or appropriate relationship to rates on the live animal. Many of them are more closely related from a transportation standpoint to commodities not of animal origin. Instead of saying here, as we said in the Sinclair Case, that fixed relationships are desirable but we are not in a position to fix them, we may better get back to the solid ground on which we stood in Investigation of Alleged Unreasonable Rates on Meats, 22 I.C.C. 160. There we were asked to so adjust rates on livestock, fresh meats, and packing house products that the combined in and out transportation charges at the different localities would be equal, and our answer was:

“Each one of these rival packing houses is entitled to a reasonable rate upon the live animal from various points of production, and those rates should be fairly related one to another. Each packing house is also entitled to a reasonable rate upon its product to various markets of consumption, and these rates, again, should be fairly adjusted with reference to one another. Any locality which remains at a disadvantage after this has been done must sustain that burden, which is due to its location with respect to this business.”

CONCLUSIONS

There seems to be no doubt that the Board of Transport Commissioners has the power to deal with the kind of cases put forward by Counsel for Alberta as effectively as the Interstate Commerce Commission has done in similar cases.

No useful amendment to the Railway Act can be recommended.

17. COST OF SERVICE PRINCIPLE

The Province of British Columbia submitted that rates should be fixed and determined more closely to a cost of service basis than to the value of service basis. The province suggested that rates should be based on the average cost of providing the service throughout Canada but without making any allowance for regional differences in costs. Under its proposal rates might vary from one class or commodity to another but only because of differences in costs based on the type of equipment used, the weight of the contents per car, whether it is loaded or unloaded by the shipper or consignee or employees of the railway, and the amount of special services performed, for example, refrigeration. It was conceded that rates might be varied because of competition.

Counsel for the province stated: “We have at no time suggested that the cost of service principle should be applied rigidly and we have not done this simply because of the difficulty of determining costs with accuracy and because also it would seem not unreasonable to assume that the mark-up on costs, or in other words the profit, would vary somewhat from one class or commodity to another.”

The province proposed an amendment to Section 325(5) of the Railway Act so that it would read as follows:

“Notwithstanding the provisions of Section 3 of this Act the powers given to The Board under this Act to fix, determine and enforce just and reasonable rates *in relation to cost of service* and to change and alter rates, etc.”

The only change proposed in the Section is the insertion of the words in italics.

Counsel agreed that there were several difficulties in the way: (1) the definition of the words “cost of service” (which does appear to be a difficulty of a fundamental nature); (2) the difficulty of applying the principle to low density lines—“The factor of density does make it more difficult to apply this principle.”

CONCLUSIONS AND RECOMMENDATIONS

The proposal submitted by British Columbia has not been shown to be a practical one. The amendment is expressed in terms which might have a more far-reaching effect than appeared to be in contemplation by Counsel. It might, indeed, lead to much higher rates than at present being charged on low-valued primary commodities. It is important that these rates should be kept relatively low. Shippers have come to depend upon them and it would be a dangerous experiment to upset the present value of service principle in favour of the untried cost of service principle. The proposed amendment cannot be accepted.

18. REPARATIONS

While the Railway Act provides penalties for departures from tolls in the published tariffs, it does not authorize the Board to order reparations to be paid by the railways if they have received tolls which the Board has subsequently found to be unreasonable. Reductions ordered by the Board apply only to future shipments when the reduced rate comes into effect.

In the United States under the Interstate Commerce Act, the Commission is authorized in certain cases to order a refund to the shipper when a rate which has been in effect is subsequently found by the Commission to have been too high.

The Canadian Manufacturers' Association and others made submissions recommending an amendment to the Railway Act which would empower the Board to order railways to refund to shippers the difference between rates actually paid and the amounts which the Board subsequently found to be reasonable tolls for the service performed. The proposal would compel the Board to examine particular tolls upon complaint in order to ascertain whether they were unreasonable (although legal) at the time they were charged.

In the final argument the three Prairie Provinces and the railways opposed the amendment. The Provinces opposed it on the ground that, generally speaking, the consumer who buys the article from the shipper or consignee has paid the freight as part of the purchase price, and that therefore any reparations allowed would benefit the shipper or consignee only, who has already collected the higher toll when selling the article to the consumer. The railways in opposing the amendment said that (a) it is unnecessary; (b) refunds are always promptly made if by mistake the shipper is charged more than the legal rate; (c) reparations are in essence legal rebates and subject to abuse; (d) in the United States where the practice exists there are reparations claims now outstanding of amounts so great (in excess of two billion dollars) that they would, if allowed, imperil the financial stability of the railways, and (e) it would be unfair to have reparations work only one way, i.e. the railways say their rates have not been high enough, yet they have no claim for reparations against shippers.

CONCLUSIONS AND RECOMMENDATIONS

There is no evidence to warrant a recommendation for the adoption of the practice of granting reparations in Canada.

The importation of such a practice into our railway law would not be a beneficial one. There is no room in our rate structure for the imposition of something which virtually amounts to retroactive rebates. There would be a danger of great instability in the whole mechanism of our rates if such a practice were instituted in Canada.

No change is recommended in the existing law or practice.

19. MIXING RULE

The Mixing Rule (Rule 10 of the Classification) enables a shipper in the East to obtain a carload rate even though the goods making up the carload are in various classes. In the West, however, a shipper may obtain a carload rate only if the goods are listed in the classification under the same distinctive heading. Distinctive headings refer to various trade goods and the following is an example of the working out of the differences between the application of the Rule in the two territories: Groceries of different classes may be mixed together in the same carload both in the East and in the West; and in the East groceries may be mixed with hardware in carloads, but in the West hardware may not be mixed with groceries at carload rates.

The Mixing Rule is described as restricted in the West and wide open in the East. This distinction has existed since 1904.

Many submissions have been made urging that there should be a uniform Mixing Rule for general application throughout Canada. There was practical unanimity in the submissions (save in the case of some wholesalers in the West) that conditions have changed and that therefore differences in treatment are no longer justified.

The attitude of the railways may be summed up as follows: the Canadian National favours "a uniform Mixing Rule for general application throughout Canada". The Canadian Pacific adopts a neutral attitude and says that the Board should decide after hearing all parties.

CONCLUSIONS AND RECOMMENDATIONS

There should be uniformity of mixing privileges throughout Canada. It is lack of uniformity in things of this kind that leads to regional claims of differences in treatment. This should be avoided whenever possible.

It is recommended that the Board, in its general investigation of the rate structure, consider the adoption of a uniform Mixing Rule of general application throughout Canada.

No legislative amendment is required.

20. THE FREIGHT CLASSIFICATION

The Canadian Freight Classification divides or classifies all articles which may be carried by the railways into ten broad classes. The articles in each particular class are grouped together because of some common characteristic, such as value, bulk, and susceptibility to damage. The first class bears the highest rate and the tenth class the lowest rate; other classes are graded roughly in varying percentages below the first class.

There are also some articles which are classified as "multiples of first class", e.g. double-first class (meaning twice the first class rates). The volume of traffic under these items is so negligible, however, that the classification is ordinarily referred to as containing 10 classes.

The present classification is uniform throughout Canada, and has been since about 1884, except (a) for the ratings applied on traffic carried in mixed carloads (this matter is dealt with elsewhere) and (b) for the White Pass and Yukon Railway which owing to special circumstances has a special classification called "The Northern Classification".

The main complaints were:

- (a) that there is an insufficient number of classes in the classification;
- (b) that the present classification is outmoded due to changed conditions and circumstances; and

- (c) that there are too many special freight tariffs on commodities taken out of the class rate tariffs so that in respect to these the classification means nothing.

There were also specific complaints that certain articles are wrongly classified, and such complaints were supported by comparison with the classification accorded to other articles.

The main remedies proposed were:

1. That additional classes should be provided lower than the current 10th Class.
2. That all classes should bear a fixed percentage of the first class which would be designated as Class 100. For example, third class would always be 70% of the first class and could be called Class 70; 10th Class might be 30% and would be called Class 30; low grade articles which are now published in special commodity tariffs would have classes established lower than Class 30, for example, Class 25.
3. That there should be a complete revision of the entire classification which would take into account changed circumstances and conditions, especially with respect to values of goods.

CONCLUSIONS

It has been demonstrated that there are anomalies in the classification, arising out of changed circumstances and conditions and particularly values. For instance, some articles, considering their present-day values and characteristics, are classified too low and could yield more revenue to the railways; conversely other articles, considering their value, lack of susceptibility to damage and their convenient packaging, are classified too high. This is a clear indication that a general revision of the freight classification is called for and will no doubt be dealt with by the Board in its General Freight Rate Investigation. The Board possesses all the powers necessary to dispose of the matter, under Section 322 of the Railway Act.

The Board is the proper body to deal with revisions of the freight classification. It has the knowledge and experience which are essential in order to avoid the danger of so elaborate a classification that the element of flexibility, which commodity rates afford, would be sacrificed for the sake of the apparent simplification, which, it is said, can be secured by numerous classes each bearing a percentage relation to the First Class or Class 100.

CHAPTER IV

EQUALIZATION

During the course of the inquiry Section 314 of the Railway Act was put forward as the "Equalization Section". It is necessary at the outset of these remarks on this subject to point out that the wording of the Section does not appear to justify the broad interpretation given to it at the hearings.

Section 314 of the Railway Act provides:

"All tolls shall always under substantially similar circumstances and conditions, in respect of all traffic of the same description, and carried in or upon the like kind of cars or conveyances, passing over the same line or route, be charged equally to all persons and at the same rate, whether by weight, mileage or otherwise.

"2. No reduction or advance in any such tolls shall be made, either directly or indirectly, in favour of or against any particular person or company travelling upon or using the railway.

"3. The tolls for carload quantities or longer distances, may be proportionately less than the tolls for less than carload quantities, or shorter distances, if such tolls are, under substantially similar circumstances, charged equally to all persons.

"4. No toll shall be charged which unjustly discriminates between different localities.

"5. The Board shall not approve or allow any toll, which for the like description of goods, or for passengers carried under substantially similar circumstances and conditions in the same direction over the same line or route is greater for a shorter than for the longer distance, within which such shorter distance is included, unless the Board is satisfied, that, owing to competition, it is expedient to allow such toll.

"6. The Board may declare that any places are competitive points within the meaning of this Act."

It will be observed that the equalization provided for in ss. 1 of this Section is confined to traffic "passing over the same line or route". Traffic passing over different lines or routes is not dealt with.

As to ss. 4 of Section 314 it has been held that the equality of treatment called for is between localities on the same line of railway. The fact that one railway company charges a higher toll than another railway company in the same area does not constitute discrimination: *Canada West Coal Company v. C.P.R.* 27 C.R.C. 113.

The Board has held that different rates in different parts of the country do not constitute discrimination: *Consumers Glass v. C.F.A.* 34 C.R.C. 56; and that different rates on different parts of the same railway do not necessarily constitute discrimination: *Dominion Sugar v. C.P.R.* 34 C.R.C. 71; and that differences in rates over the same line but in opposite directions is not necessarily discrimination: *Consumers Glass Co. v. C.F.A.* 38 C.R.C. 77.

Section 314(5) which deals with the long and short haul also restricts its provisions to traffic travelling in the same direction over the same line or route.

Section 329(3) of the Act provides:

"The special freight tariffs shall specify the toll or tolls, lower than in the standard freight tariff, to be charged by the company for any particular commodity or commodities, or for each or any class or classes of the freight classification, or to or from a certain point or points on the railway; and greater tolls shall not be charged for a shorter than for a longer distance over the same line in the same direction, if such shorter distance is included in the longer."

It will be noted that the language in this Section is even more limited in scope, namely "over the same line in the same direction", not "over the same line or route" as in Section 314(5).

The requirement of equality is also limited in Section 314(1) by the recognition of the fact that dissimilar circumstances or conditions may justify a departure from the rule.

In the argument before the Commission much stress was laid upon the force and meaning of the words "under substantially similar circumstances and conditions". It seemed to be assumed that, if these words were removed from Section 314 the objective of all-round equalization would be attained.

This assumption is unfounded. The Section is limited in its application to traffic moving, in the one case (subsection 1) over the same line or route, and in the other case (subsection 5) *in the same direction* over the same line or route; but even within the limits of these lines or routes inequality may exist if conditions and circumstances are dissimilar. The words have no application to traffic on different lines or routes and, in some cases, in different directions over the same line or route.

Reference might also be made to Section 319, which reads as follows:

"Whenever it is shown that any railway company charges one person, company, or class of persons, or the persons in any district, lower tolls for the same or similar goods, or lower tolls for the same or similar services, than it charges to other persons, companies, or classes of persons or to the persons in another district, or makes any difference in treatment in respect of such companies, or persons, the burden of proving that such lower toll or difference in treatment does not amount to an undue preference or an unjust discrimination, shall lie on the company."

By this Section and according to the interpretation given to it by the Board, Parliament recognizes that even on the same line of the same company inequality of treatment may exist provided it does not result in undue preference or unjust discrimination: *Winnipeg Board of Trade v. C.P.R.* 36 C.R.C. 100.

Reference may also be made to Section 316 (3a and c), and to Section 325(5). But neither of these sections has been interpreted as requiring equality of treatment as between shippers or localities in the absence of some evidence of unjust discrimination or undue preference. There is therefore no specific provision in the Railway Act calling for complete equalization of rates throughout Canada.

THE RELEVANT FACTS

The facts show that for about two years (1881-1883) the rates of the Government Railways in Manitoba (which subsequently became part of the Canadian Pacific Railway system) were approximately the same as the Grand Trunk Railway's "winter" rates in Ontario and Quebec. In 1883 however they were increased by 50% or thereabouts. This was said to be justified on several grounds: higher costs of supplies and differences in density of traffic and in terrain increased operating costs, and resulted in these higher rates in the Prairies and in the imposition of the "Mountain Differential" in the Rockies. This differential was finally removed on July 1, 1949. Differences in competitive conditions in the East and the West also led to lower rates in the first region. The Board of Transport Commissioners said in 1914 in the Western Rates Case that water competition necessitated lower rates in Eastern Canada, and again in 1948 in the 21% Case that "Lower rates in Eastern Canada are compelled by water competition, combination of water and motor truck competition, as well as rates established by the United States lines, particularly as far as export and import traffic is concerned".

In 1920 the Governor in Council in P.C. 2434 in a reference back to the Board referred to the "very great desirability of bringing about with the least possible delay equalization of Eastern and Western rates" and mentioned the probability of materially changed conditions "tending more and more to make equalization practicable".

In 1925 by P.C. 886 the Governor in Council directed a general freight rate investigation and stated that "the policy of equalization of freight rates should be recognized to the fullest possible extent as being the only means of dealing equitably with all parts of Canada".

The matter was discussed in the recent judgment of the Board in the 21% Case and the Board pointed out that there are instances where rates in the West are lower than in the East and in other cases the reverse is true, but they said: "The general rate level as a whole in Ontario-Quebec is below that in the Prairies." The Board, however, justified this on the grounds set out above.

It has been demonstrated that over the years there has been a gradual improvement in the situation and the railways argue that now, taking into account the Crowsnest rates on grain, there is little or no difference in the general over-all level of rates between the West and the East.

Nevertheless the fact remains that the alleged inequalities in rates have been a subject of contention for many years and in April, 1948, the Governor in Council by P.C. 1487 directed the Board to conduct a freight rate investigation "with a view to the establishment of a fair and reasonable rates structure, which will, under substantially similar circumstances and conditions, be equal in its application to all persons and localities..."

THE ARGUMENT OF THE PROVINCES

British Columbia, Alberta and Manitoba urged that equalization be effected, and insisted that fresh legislation is required and that, based on past experience, it will never be achieved except by legislation. They argued that P.C. 1487 leaves the Board in the same position as in the case of the Order in Council of 1925, and as it was in on March 30, 1948, when it delivered the Judgment in the 21% Case. Saskatchewan stated that although equalization was desirable it may be impossible to achieve.

The Maritime Provinces said that they did not "subscribe to or support so-called equalization of freight rates" and stated "rate equalization is impossible of achievement". Accordingly they opposed an amendment to the Maritime Freight Rates Act submitted by the Canadian Pacific Railway Company as being essential to the bringing into effect of an equalization plan.

THE ATTITUDE OF THE RAILWAYS

In the submission to the Commission by the Canadian National Railways appears the following statement:

"The Canadian National concedes the desirability of equalization of class rates, distributing rates (including town tariff or Schedule 'A') and distance commodity rates provided such equalization is effected without detriment to its revenue position.

"The Canadian National considers it impracticable to equalize special commodity rates or competitive rates."

The Canadian Pacific Railway Company in its submission dealt with the matter at considerable length but its conclusions on the subject may be briefly stated as follows:

1. Studies in connection with equalization proposals are not complete;

2. The extent to which they may be carried out must depend upon the study of data now being obtained by the Board of Transport Commissioners in connection with its Waybill Study;
3. With these qualifications in mind, the railways propose equalization of the standard class rates, distributing class rates and the commodity mileage scales as between Eastern and Western Canada;
4. The railways do not propose and do not believe it practicable or even desirable to attempt equalization of special commodity rates or competitive rates; and
5. Certain difficulties arise in an equalization program:
 - (a) The Maritime Freight Rates Act will require amendment;
 - (b) Unless the so-called Crowsnest Pass Grain Rates are allowed to find their proper level equalization will not be true equalization; and
 - (c) The assumed mileages between Fort William and Winnipeg and between Vancouver and Glacier, B.C., must be eliminated from the rate structure.

CONCLUSIONS AND RECOMMENDATIONS

1. It would appear, from the foregoing and having regard particularly to the terms of Order in Council No. P.C. 1487, that the broad general principle of equalization throughout the country is now accepted. It must be noted, however, that the Order in Council provides that this equalization shall be subject to such special statutory provisions as affect freight rates.
2. It is difficult to conceive of an unqualified statutory rule for equalization. Exceptions to equality must necessarily be permitted in the following cases and other cases which may come to the attention of the Board as the investigation proceeds:
 - (a) All international rates;
 - (b) Rates on export and import traffic through Canadian ports, where in practice such tolls bear a fixed and longstanding relationship with rates on similar freight through ports in the United States;
 - (c) Competitive rates under the conditions discussed elsewhere in this report;
 - (d) Agreed charges authorized by the Board under The Transport Act;
 - (e) Rates over the White Pass and Yukon route; and
 - (f) Rates on railway lines not embraced in the Canadian Pacific or Canadian National systems and which may not be able to operate on rate levels in force elsewhere.
3. The words "under substantially similar circumstances and conditions" contained in Section 314 of the Railway Act cannot properly be eliminated because this section is essentially an anti-discrimination section.
4. In Section 2 of the Interstate Commerce Act of the United States, the words "under substantially similar circumstances and conditions" are used in defining and prohibiting unjust discrimination. However, the Interstate Commerce Commission is in the process of equalizing class rates throughout a large portion of the United States.
5. The objective of equalization is something which can only be attained after considerable study by the Board and by the railways. Undoubtedly many serious problems are involved, for example the effect that the proposals may have on railway revenues, on established industries and on trade and market patterns. All of these things are matters of the utmost importance. Having regard to the large number of rate changes which

will be involved, the problem is one peculiarly for the Board to resolve finally after the General Freight Rate Investigation and after all parties who may be affected by the proposals have had an opportunity of being heard.

6. The Canadian railways have agreed that within limits equalization is now desirable.
7. Since the Canadian Pacific Railway Company has intimated that, in its view, amendments will be required to Section 3(2) of the Maritime Freight Rates Act and to Section 325 of the Railway Act dealing with Crowsnest rates, it must be pointed out here that both of these subjects are dealt with at length elsewhere in this report.
8. The Board has requested the railways to submit to them the railways' proposals for equalization of freight rates throughout Canada subject to statutory prohibitions contained in Section 325 of the Railway Act and in the Maritime Freight Rates Act.
9. Consideration of the various complaints and suggestions referred to in the immediately preceding chapter and the recommendations made with respect thereto indicate that substantial progress towards the goal of equalization may be accomplished by the following means:
 - (a) The abolition of the present standard maximum mileage tariffs;
 - (b) The establishment of one uniform equalized class rate scale throughout Canada applicable on each of the two major railway systems, expressed in mileage distances or in specific rates between all specified points on each railway; the tolls in such tariffs to be specified in blocks or groups by mileage or otherwise, and such blocks or groups to include relatively greater distances for the longer than for the shorter hauls, the level of this uniform equalized scale to be fixed by the Board;
 - (c) The establishment of uniform equalized commodity mileage scales throughout Canada applicable on each of the two major railway systems; the tolls in such tariffs to be expressed in blocks or groups and to include relatively greater distances for the longer than for the shorter hauls, the level of these scales also to be fixed by the Board;
 - (d) The revision of the present commodity tariffs of tolls between specified points on each of the two major railway systems, which the Board should endeavour to have uniform throughout Canada, as far as may be possible, having regard to all proper interests;
 - (e) The publication of special freight tariffs of tolls for accessorial and special services to be performed by the railways and not provided for by the aforesaid class or commodity tariffs, which special tolls shall, so far as possible, be uniform throughout Canada;
 - (f) The elimination of the so-called "terminal" class rates in Western Canada;
 - (g) The establishment of larger mileage groups for longer distances so that main producing points in defined areas may be in the same rate group;
 - (h) The establishment of uniform percentage relationships for class rates applicable both in Eastern and Western Canada;
 - (i) The averaging of the different "taper" of Western and Eastern Canadian class rates;
 - (j) A provision for tapering rates between Western and Eastern Canada so that they shall hereafter be fairly related to distance, instead of being made as now by what are in reality combinations on Fort William;

- (k) The application of maxima to percentage increases on long haul rates in future general revenue cases so as to avoid increasing such rates unduly; and
 - (l) The establishment of the Eastern carload mixing rule in western Canada and between eastern and western Canada.
10. The foregoing items point to a new departure in class rates and commodity mileage rates, and eventually, in so far as practicable, in special or specific rates for the Canadian portion of the North American Continent. It appears that Canada has reached a stage in its development when former methods of making regional rates must give way to a uniform rate structure that, as far as may be possible, will treat all citizens, localities, districts and regions alike.
11. With the uniform equalized class and commodity scales so constructed and put into effect within a reasonable period it may be possible to use these scales as a pattern for the elimination of the several other anomalies which exist in the numerous special freight tariffs between specified points. It may be expected that such special freight tariffs will be brought into uniformity in so far as this can be accomplished having regard to all proper interests.
- It appears desirable that a beginning should be made with the uniform scales. Other adjustments may properly follow as time and conditions demonstrate to what extent the many specific rates now existing can be made more uniform than they are today.
12. Changes should be made in the "Traffic, Tolls and Tariffs" sections of the Railway Act in order to empower the Board to effect and maintain the uniformity in rates throughout Canada herein recommended.

CHAPTER V

OTHER MATTERS OF NATIONAL OR LOCAL CONCERN

1. PUBLIC OWNERSHIP OF RAILWAYS

The Province of Saskatchewan suggested that a study should be made to determine whether all railways in Canada should be under public ownership. Counsel for the Province made it clear that they did not commit themselves one way or the other and were not recommending public ownership. They wished to be understood as merely suggesting that public ownership might "be the solution to Canada's transportation problem" and that therefore it deserved study.

The Saskatchewan Federated Co-operative Limited stated that if the railways will not avoid duplication and reduce expenses or pool their services, there should be amalgamation.

The Province of Manitoba said that it was against amalgamation of the two railways and that the Canadian Pacific Railway Company should continue as a privately owned system, and that it was better to have two competing systems, one privately owned and one government owned.

The Government of Prince Edward Island submitted an extensive brief and argument on the subject and their views may be summarized as follows:

- (a) They do not believe in state control for the mere sake of state control, but history shows that the movement has been from private to public ownership rather than from public back to private ownership;
- (b) The best reason for nationalization is that the present system does not work and that no system tried in Canada has ever worked;
- (c) Lengthy reference is made to the unification proposals of Sir Edward Beatty in the 30's and to the Canadian Pacific Railway's statements before this Commission that railways will constantly require new capital;
- (d) This new capital must come either from private investors or from the Government;
- (e) Private capital will probably not be obtainable unless there is reasonable assurance of a fair return to shareholders and this means higher freight rates;
- (f) The transportation costs of Canada are paid by the people of Canada of all trades, professions, or other occupations in the form of rates or of taxes, and it does not matter from which pocket such costs come;
- (g) There is danger of the Railways pricing themselves out of business and also of a heavy burden on marginal producers and of interference with the productive economy of the country; and
- (h) Under nationalization if freight rates cannot be raised a deficit will result which will be paid by the people of Canada. Such deficit will be paid through taxes by the people who are best able to pay it.

The Canadian Pacific Railway Company in its submission stated: "Canadian Pacific submits that no useful purpose would be served through a study of unification of all railways under public ownership".

CONCLUSIONS

This question of railway amalgamation, either under public or private ownership, has been considered before in this country. It was indeed a subject

of wide public discussion all through the 1930's. In 1932, at a time of great national and world-wide depression, when the need of attaining a maximum of economy and the more effective use of the railways of Canada was studied by a Commission under the Chairmanship of Sir Lyman Duff, the Commissioners unanimously rejected the proposal of unification in the various forms in which it was presented to them: Public ownership, private ownership or a lease in perpetuity or for a long period of the Canadian National Railways to the Canadian Pacific Railway Company. It appeared to the Commissioners that, "to establish a monopoly of such magnitude and importance would place in the hands of those responsible for the administration of the system powers that would, if not properly exercised, prejudice the interests of the Dominion as a whole". On the other hand, the Commissioners expressed the belief that with the development of the country and the growth of its population the management of so large a system as would naturally be brought into being would become unwieldy and necessitate segregation. These reasons against unification advanced in 1932 are even more cogent in the altered economic conditions which exist in Canada today.

The proposal of unification was rejected again by a Special Committee of the Senate in the Session of 1938-39. The report of the Committee declared that it was in the interests of the railways and of business generally that, "the agitation for unification be ended by frank recognition of the fact that unification of the railways is not possible of adoption".

The majority of the provincial representatives and of the representatives of other bodies who appeared before this Commission favoured the continuance of the present system of two large railway organizations, with the necessary corollary that the Canadian Pacific Railway must be allowed to live and to operate as a privately owned railway.

Much assistance, in studying the question of state monopoly of transportation, was derived from the brief on the subject presented to the Commission on behalf of the Government of Prince Edward Island. It is true, as is stated in this brief, that "Canada and the United States alone of all the major countries in the world retain private ownership to any large degree". It is equally true and most interesting to note, for instance, as the brief says, that "In Germany, before the first war, one-third of the total expenditure of the state was provided by the surplus profits of state owned railways". This example and others given tend to show that a state monopoly may prove practical in the countries of Europe, small in size but containing relatively large and compact populations, and in which the jurisdiction over the different agencies of transportation is not divided but is controlled by the one central legislature and government. But it does not follow that the same results would necessarily be realized by the adoption of central state control of railways in the vast countries of North America, where conditions of government, of extent of territory, and (especially in the case of Canada) of the relation of population to territory and to railway mileage are altogether different from those which are found in the United Kingdom and on the European Continent. It may be noted also that in the years before 1914 when (as the Brief says) German railways produced large profits, they did not have the highway competition which exists today.

Moreover, it seems to be of some importance to note that the Order in Council creating this Commission makes no mention, in its enumeration of subjects requiring particular attention, of any report on government ownership of all Railways. On the contrary the enumeration (e.g. 2(e)) seems to assume the continuation of Canada's present system. It must be presumed that, if it had been intended that a matter of this magnitude were to be investigated and reported upon, the Order in Council would have contained a specific direction about it. It is true, of course, that the general language of the Order in Council

might be construed as being broad enough to bring even this vast subject within the range of the Commission. But a proper study of such a subject would have required an expenditure of time and an employment of skill that it has not been considered reasonable to embark upon.

There is, therefore, no reason whatever to recommend either unification, amalgamation or public ownership of all railways in Canada.

2. PROPOSED RAILWAY EXPANSION AND MATTERS INCIDENTAL THERETO

The future of Canada's railways is a subject of much discussion. Before dealing with it, it will be well to state summarily the experience of transportation in the United States since the beginning of the railway system of that country down through recent years where competition, notably highway competition, has rendered conditions harder and harder for the railways. Reference to what has occurred in the United States in matters of national development is usually of interest when probabilities as to the course of events in Canada are being considered; provided account is taken of the dissimilarities as well as the similarities which exist between conditions in the two countries.

The development of railways in the United States took place mainly in the years from 1850 to 1920. In ten-year periods commencing in 1850 the railway mileage increased from 9 thousand to 30, to 53, to 93, to 163, to 193, to 240 and to the peak of 252 thousand miles in 1920. Starting in 1917 more miles were abandoned than were constructed and by 1943 there was 26,000 less mileage than there had been in 1916.

Abandonments began to take place at a substantial annual mileage rate after 1920. For the ten-year period from 1921 to 1930 inclusive about 6,200 miles were abandoned, in the next five-year period 8,270 miles, in the next 8,950 and in the next 6,540. In the three-year period from 1946 to 1948 there were about 1,620 miles abandoned. For the twenty-eight year period from 1921 to 1948 there was an abandonment of over 31,604 miles. In the six years from 1943 to 1948 over 4,000 miles were abandoned and only 290 miles, or an average of less than fifty miles per year, constructed. The dominant causes of abandonment during the years following 1935 are said to have been highway competition, which is estimated to have brought about 50% of the total; exhaustion of natural resources, 21%; re-location of industry, 12%; and cessation of industry, 10%. The remaining 7% is attributed to miscellaneous causes including connections with public improvements and competition from water carriers and pipe lines.

The authority of the Interstate Commerce Commission over proposed railway abandonment is practically exclusive. When prospects indicate continued loss, complete abandonment is nearly always permitted. This frequently turns upon the availability of alternative services, and in some instances abandonments have been approved on condition that the applicant substitute motor carrier service. Cases denied by the Commission have been relatively unimportant, involving only comparatively small mileage. The Commission has usually adopted the principle that lines which impair the ability of a carrier to perform its duties to the public should be discontinued.

It is therefore apparent that railway expansion in the United States has not kept pace with the great increase in population, but has rather fallen back while population has gone ahead, giving way, especially before the advance of the motor truck in practically all territory.

In Canada the situation is somewhat different. There is still room for railway expansion where it is called for by the needs of settlers already established in productive areas or by the necessity of making available new areas possessing

mineral and other natural resources attainable only by railway. It seems to be generally assumed that most, if not all, railway expansion in the foreseeable future will be carried on by the Government of Canada or by the Canadian National Railways which the Government owns. The day of illconceived and therefore excessive construction seems to have gone by, and our people can feel reasonably assured that from now on no railway ventures will be undertaken excepting after thorough investigation of each project and always with due regard to the financial commitments involved.

PEACE RIVER-PACIFIC REGION

In the course of the sittings of the Commission representations were made in respect of various railway enterprises. One of these is a proposed Peace River-Pacific Railway brought forward by the Senator and Member of Parliament for the Cariboo District of British Columbia. During the war there was set up by the House of Commons a committee known as the Committee on Reconstruction and Re-establishment, which submitted a number of proposals to Parliament, most of which have received favourable consideration. The following recommendation, however, in the opinion of those who made it, has not yet received sufficient attention:

"6. That the Peace River country of British Columbia and Alberta be given direct railway connection with the Pacific Coast at the earliest possible moment. This railway connection is essential to the proper economic development of British Columbia and Alberta; without it, Canada as a nation will lose a great part of the value of the coming exploration and development of the northwest portion of Canada, opened up by military air routes and the Alaska Highway."

The concrete submission made is as follows:

"... that an early start be made upon the construction of such railway extensions in the Peace River country of British Columbia and Alberta as will link the settled areas of that region with Northern Alberta Railways at Hines Creek, Alberta, and Dawson Creek, B.C., and with Canadian National Railways at the divisional point of Prince George, B.C."

During the course of the last Session of Parliament a step was taken which appears to be in line with the request of the people of the area for railway facilities; a resolution was adopted providing a subsidy of \$15,000 per mile to aid in the construction of an extension of the Pacific Great Eastern Railway in British Columbia from Quesnel to Prince George on the line of the Canadian National Railway to Prince Rupert, a distance of about 83 miles. The Pacific Great Eastern Railway belongs to the Government of British Columbia. Parliament was told that the extension of the Pacific Great Eastern Railway line to Prince George is expected to open up all Central British Columbia as a contributor of traffic to the northern line of the Canadian National Railways. When this resolution was introduced into the House of Commons by the Minister of Transport a debate ensued in which the matters contained in the submission made to the Commission were fully discussed by the members of the Government and members of Parliament from the region in question. The Commission has since been informed that work on the Pacific Great Eastern Railway extension is well under way. Since these matters are receiving the close attention of the Government and of Parliament no recommendation is necessary at this time.

HUDSON BAY RAILWAY

In the brief presented at Winnipeg by the Premier of Manitoba the following paragraphs are found:

"... our concern is with the provision of transportation facilities in the newer areas in the northern part of Manitoba where present transportation facilities are under-developed, and with the use of this railway for the movement of Canadian products to market and for the bringing in of supplies.

'Item 14. With respect to the Hudson Bay Railway it is our submission that in the interests of Western Canada in general and Manitoba in particular, the maximum effort should be made to utilize that railroad to the greatest possible extent, as a means of moving farm products to the markets of the world; as a means of bringing supplies from Europe and elsewhere; and as a means of improving transportation facilities for the rapidly expanding mineral industries of Northern Manitoba.'

Counsel for the City of Winnipeg and the Winnipeg Chamber of Commerce made the following statement:

"It is submitted that it is a matter of great importance to the economy of Canada that all industries should not be concentrated in the central provinces. This situation has come about to some extent by virtue of the low transcontinental rates which make it possible for industries in eastern Canada to compete on even terms so far as freight rates are concerned with industries in Manitoba.

"In order that this objective may meet with more success than it has in the past, it is our submission that more commodity rates should be established from Churchill, Manitoba, to Winnipeg, on the same or a lower basis to those in effect from Montreal. This seems to us to be reasonable in every way in view of the fact that the mileage from Churchill, Manitoba, to Winnipeg is considerably less than from Montreal to Winnipeg.

"An effort should also be made to have the insurance rates on ocean traffic reduced."

Also at Winnipeg representations were made to the Commission on behalf of Vulcan Iron and Engineering Limited calling for reduced rates on traffic going from Churchill to Winnipeg, in order to increase the use of that port both for outbound and inbound traffic, to reduce the cost of purchases to the western consumer, and hence to increase the flow of traffic and the revenues of the Hudson Bay Railway. The representative of the Company said that they are vitally interested in the Hudson Bay Railway and Port and would prefer to use them if they could secure an adjustment of freight rates.

At Regina representations were made by the Hudson Bay Route Association, which may be summarized as follows:

"That the present freight rate structure applicable to the Hudson Bay Railway is on a level which fails to reflect adequately the shorter distance of Prairie points to tidewater at Churchill and a revision of the rate structure is essential to make the route more attractive to Prairie importers and distributors.

"That the Commission give careful consideration to our request for railway extensions in the North . . .

"That due consideration be given to colonization of the fertile Nelson River area.

"That a Freight Soliciting Agent be appointed for the specific purpose of promoting traffic for the Hudson Bay Route.

"The Association further recommends that a full scale test of the capability of the Hudson Bay Route in the export of prairie grain be inaugurated."

These extensions in the north and west, taken together, involve railway construction of about 1,420 miles, amounting to a continuous route from Churchill to the Pacific Coast with branch lines as feeders. Such a plan of construction would, of course, require large expenditures on railways in regions still sparsely

settled and the development prospects of which would first have to be ascertained. The time may come when the resources of the region will be found to justify large expenditures on railway construction. After appearing before the Commission the Hudson Bay Route Association sent a committee of its members to Ottawa to lay their proposals before the Government, which is therefore fully acquainted with the case presented by the Association.

With regard to the use of the Hudson Bay Route for shipments of grain to Europe and of commodities from Europe to Canada, the past year, 1950, had the best season so far in the history of the Route. The quantity of grain moved through the Port of Churchill during the 1950 season of navigation was 6,767,743 bushels, 1,000,000 bushels more than the quantity handled in any previous year. The commodities imported through Churchill amounted to 3,350 tons, the greatest which the port has recorded since the beginning of its operations. This, of course, is not a large volume, because twenty vessels were engaged in the outward and inward traffic at Churchill in 1950.

Regarding freight rates the equalized uniform rate scale which is recommended in the Chapter on Equalization will undoubtedly be lower than the present rates within Western Canada—especially when it is remembered that the present class rates between Churchill and the Prairies (also British Columbia) are “terminal rates” which are made by means of the so-called “constructive mileage” of 130 miles off the standard mileage rates.

CANADIAN CO-OPERATIVE PROCESSORS LIMITED

Canadian Co-operative Processors Limited complained of incompleted branch lines of both the Canadian Pacific Railway and the Canadian National Railways leading to Swift Current, Saskatchewan. The submission was that as a result of failure to complete the lines, longer hauls and hence higher freight charges resulted in bringing materials to their plant.

THE “FILL-THE-GAP” ASSOCIATION

The “Fill-the-Gap” Association asked for the completion of the railway line of the Canadian Pacific Railway between Valmarie and Mankota, Saskatchewan. The brief stated that great hardships resulted from the non-completion of this line, e.g. delays in mail delivery, difficulties in taking people to hospitals and long freight hauls.

THE RURAL MUNICIPALITY OF COULEE

The rural municipality of Coulee complained that although the Canadian National Railways line from Neidpath to Swift Current, Saskatchewan, was built in 1931, it has not been put in operation, is not now being maintained, and grain and coal are carried between Neidpath and Burnham only upon arrangements with the local agent.

CHIBOUGAMAU LAKE PROJECT

In the year 1948 the Canadian National Railways completed the construction of a line about 40 miles in length from Barraute to Rapide des Cedres in the Abitibi region, Quebec. The representative of the Abitibi Economic Planning Council appeared before the Commission to submit that the Canadian National Railways should continue construction to Chibougamau Lake, through Bachelor Lake, a distance of about 165 miles.

The Commission has since been informed that the Canadian National Railway Company is considering this matter and is awaiting further information to decide whether potential traffic will warrant the building of the extension.

OTHER RAILWAY EXPANSION BEING UNDERTAKEN OR CONSIDERED

Two projects concerning which no representations were made have come to light recently. Both have to do with development of natural resources in northern areas. One is in Manitoba from Sherridon to Lynn Lake, a distance of 160 miles and is under consideration by the Canadian National Railways. The other, in the Provinces of Quebec and Newfoundland, from Seven Islands on the Lower St. Lawrence to Knob Lake, a distance of approximately 360 miles, is being undertaken by the Quebec North Shore and Labrador Railway Company incorporated in 1947 by Federal Statute. The grading and laying of track is estimated to cost about \$70 million and the rolling stock from \$40 to \$45 million. It is expected that this line will be completed by the fall of 1954. Information shows that the railway receives no federal subsidy. The railway company is owned by Hollinger Consolidated Gold Mines Limited and Hanna Coal and Ore Corporation. The Commission is informed that it will eventually be wholly owned by the Iron Ore Company of Canada.

CONCLUSIONS

Among the representations mentioned in the foregoing paragraphs, request is made for freight rate adjustments which are matters for the consideration of the railways and also of the Board of Transport Commissioners. The Board will no doubt deal with them as part of their task under Order in Council 1487.

As to the matters brought forward by the Canadian Co-operative Processors Limited, the "Fill-the-Gap" Association and the rural municipality of Coulee, these have been subjects of long standing complaints and have been receiving the consideration of the competent authorities for a considerable time.

As to the other projects mentioned there is nothing to be added to the comments above made respecting each of them.

On the general question of the future of Canada's railways there are certain matters which must be borne in mind by all those who are concerned in any manner with the solution of railway problems. The most important of these is the fact that motor truck competition has made it increasingly harder, during the last 25 years, for the railways to maintain their position as carriers who ought to be able to give the public in all parts of Canada reasonably equal treatment in respect to tolls. Truck competition in Central Canada has grown to such a size as to eat into the railways' revenues by capturing a great portion of their most profitable traffic and by making it necessary for them to reduce their rates to what looks like a dangerously low point in order to retain some of it. The problem is a difficult one to handle because truck traffic, in by far its largest form, is a subject which is of provincial and not of federal control, and it is further divided between the private trucks carrying the goods of their owners and the trucks that work for hire. Of these two classes of trucks the former is very much the larger.

The figures set out at the beginning of this section show that about 15,000 miles of railway in the United States were abandoned between 1921 and 1948 because of truck competition. So far this competition has had no appreciable effect in reducing railway mileage in Canada, but the near future will show to what extent the railways can meet competition successfully. This question is dealt with more fully in another part of this report. The present tendency of our population to increase, especially in Ontario, and the accompanying increase in business throughout the country will widen the possibilities of this competition and at the same time intensify it.

Up to the present, line and service abandonments by railways have not been looked upon with favour in Canada. It is time now for all concerned to

re-consider their attitude in this regard. If the American railways had not been allowed to meet by abandonment, sometimes partial and sometimes total, the difficulties created by highway competition, by the cessation or relocation of industry, by the exhaustion of natural resources, etc. they would undoubtedly have been in a much more unfavourable position than they are today. Our railways should be allowed to practise similar economies in cases where operations are shown to have become substantially unnecessary or to be definitely unprofitable, especially, of course, when it is shown that reasonable service can be assured by other agencies.

The survival of Canada's railways, both private and government owned, is of essential importance to the nation. When further transportation facilities become necessary in parts of the country not yet supplied, the task of providing them will generally fall to the railways.

RECOMMENDATIONS

For the various reasons set out above no specific recommendations are required in relation to the aforesaid representations.

3. PASSENGER FARES

Only one complaint was made to the Commission concerning passenger fares. After referring to the elimination of the Mountain Differential in so far as freight rates are concerned, counsel for British Columbia stated "One glaring example of such unfair discrimination remains today in British Columbia and that is in regard to passenger fares. The basic passenger fares in British Columbia are one-half of a cent per mile higher than in the rest of Canada." While British Columbia admitted that passenger traffic as a whole is carried at a loss it stated that nowhere else in Canada do the railways suggest that they apply the principle of cost and value of service in fixing passenger fares. Counsel for the province stated: "If the railways seriously mean that they will accord the same treatment to all parts of Canada they should now prove their good faith by immediately reducing the passenger fares in British Columbia. The total revenue involved cannot be large but the railways will be able to demonstrate that they are to be taken seriously when they say they believe in the equality of rates wherever possible." The official view of the Canadian Pacific Railway was that it would not be willing to place passenger fares in British Columbia on the same basis as the rest of Canada. The Canadian National Railways took the same position.

CONCLUSIONS

It seems to be an anomaly under present conditions that the passenger fares in one part of the country should be different from those which prevail elsewhere. It would, however, appear that the proper procedure for British Columbia to adopt is to make an application to the Board as was done in the Mountain Differential freight rates case.

There is no recommendation to be made on this subject.

4. SEGREGATION OF PASSENGER AND FREIGHT REVENUES AND EXPENSES

The Province of British Columbia urged that the railways should segregate freight and passenger revenue and expense accounts. The Province of Manitoba supported the position taken by British Columbia and stated that passenger revenue losses are not properly chargeable to freight earnings and that the

burden falls on the long haul non-competitive traffic because passenger fares cannot be increased and the revenue must be made up by the railways by additional charges to freight traffic. The Federal Government, it was said, should subsidize the losses on passenger traffic. Manitoba accordingly submitted an amendment to the Railway Act the effect of which is to compel the Board in any application for increase or decrease in tolls to have "due regard to the cost of operating any particular service and without restricting the generality of this paragraph the cost of passenger service". This amendment was supported by the Province of Alberta. The Maritime Board of Trade in its submission stated that it was in favour of the segregation of passenger and freight revenues and expenses and believed it to be in the interest of the railways. Similar representations were made by the Canadian Manufacturers' Association at the Toronto regional hearing.

The main argument of those supporting such segregation may be summarized as follows:

- (a) That the passenger losses are substantial;
- (b) That formerly these were paid by all shippers;
- (c) That, since the railways must make up losses on passenger traffic by additional increases on freight rates, the burden now falls on long haul traffic;
- (d) That the railways are not concerned because they can pass their passenger traffic losses along to freight traffic; and
- (e) That a subsidy to the railways by the Government may be the solution.

In the 21 per cent case decided on March 30, 1948, the question was raised before the Board when Counsel for British Columbia contended that the obligation of maintaining the passenger traffic should not be placed upon the users of the freight services and that the Board should not at any time be put in the position of establishing freight rates which must necessarily be unjust and discriminatory by reason of the inclusion in such rates of some consideration affecting passenger losses. The Board stated that the evidence as to operating results of the passenger services supplied by both the Canadian National and Canadian Pacific railways was not very satisfactory because of the inability of the two railways to furnish the Board with figures showing actual operating expenses apart from freight operation costs. The Board said that only about 38 per cent of the working expenses were separable in the Canadian National Railways' accounts and the balance could only be apportioned upon an arbitrary or statistical basis, and that in the case of the Canadian Pacific Railway only 30 per cent of the expenses were directly separable in that company's accounts, and the remaining 70 per cent could only be apportioned on an arbitrary and theoretical basis.

The Board stated:

"Although the evidence before us is insufficient on which to make specific findings of the actual extent of profits or losses, the passenger service shows consistent deficits except during the heavy movement of passengers and troops during the period of the last war and the year following.

Witnesses for the railways stated that they did not think that Canadian passenger fares could be increased; that such action would produce a reduction rather than an increase in passenger revenue, and referred to the competition of private motor cars, buses and air lines.

So far as I have been able to discover, this question has not been specifically dealt with in any previous decisions of the Board.

It is generally recognized that freight services are relatively more profitable than the passenger services. The rates of both classes of services are subject to regulation under The Railway Act. The freight and passenger services are both essential to the

respondents and to the public in general. The railways are required to furnish both services. They are interrelated. And revenue losses or deficits on the one must necessarily be compensated by earnings on the other if the railway carriers are to continue to operate. I am unable to agree with the submissions made here that we can authorize no increase in freight rates, if such increase, to some degree, be necessary to correct deficiencies in aggregate earnings growing out of the inability of the passenger service to meet its full share of the revenue burden. This is the view taken of the matter by the Interstate Commerce Commission of the U.S.A. in a number of decisions."

The Board then made quotations from three decisions of the Interstate Commerce Commission in 1926, 1937 and 1940 and referred to other Interstate Commerce Commission decisions in 1931 and 1946 to the same effect. The result of the American decisions may be summed up as follows: the freight and passenger services are both essential and both may be subjected to reasonable rates and charges to produce the fair *aggregate return* authorized by the law even though thereby a higher rate of return may be exacted from the one than from the other.

Both the Canadian National and Canadian Pacific railways expressed the view that segregation of revenue and expense accounts between freight and passenger traffic would be of little or no positive value to the railway companies, would be expensive, and would in any event be an arbitrary, statistical or theoretical segregation. Since the passenger services must be provided, the revenues to provide such services must be obtained from freight traffic if the passenger fares do not themselves provide sufficient revenue because it is impossible to increase the passenger fares.

CONCLUSIONS

The freight and passenger services are essential and if the passenger fares cannot be raised to produce sufficient revenues to enable the passenger traffic to pay its own way the freight traffic must bear the burden. The two services are so interrelated that segregation is not practical.

RECOMMENDATIONS

The amendment proposed relating to segregation of revenues and expenses between freight and passenger traffic cannot be recommended.

The Commission does not subscribe to the view that the Federal Government should subsidize passenger traffic.

5. RATES FOR THE CARRIAGE OF MAIL MILITARY PERSONNEL AND MATERIEL, POLICEMEN AND OTHERS TRAVELLING ON HIS MAJESTY'S SERVICE

Under Section 351 of the Railway Act and Section 80 of the Post Office Act the obligation rests on the railways of Canada to place their facilities at the disposal of the Government for the carriage of His Majesty's Mail, naval and military forces, provisions or stores for their use, etc., "on such terms and conditions and under such regulations" as the Governor in Council makes.

The practice prevailing in the past and at the present time is for the railways to apply to the Postmaster General or to the Minister of National Defence for an increase in rates when the railways feel that because of changed conditions the rates are inadequate. Negotiations are then carried on between the railways and the department concerned.

The railways complained that the present situation is unsatisfactory on the following grounds:

1. Their experience with the Post Office Department has been that there are almost interminable delays (extending into years) in obtaining consideration and disposal of their applications. This is borne out by the facts.

2. The Post Office Department admitted that it is not experienced in dealing with the factors governing railway rates.
3. The Board of Transport Commissioners should have jurisdiction over rates for the carriage of mail just as it has over other rates, so that a proper balance can be maintained and freight traffic generally will not be unduly burdened.
4. With respect to the rates for military personnel and materiel, etc., to all intents and purposes these rates are already under the jurisdiction of the Board and they should be placed there by Statute.
5. In no other rate adjustment field is one of the parties to the contract of carriage clothed with authority to finally determine applicable rates.

The railways both proposed that the rates for these services be placed under the jurisdiction of the Board of Transport Commissioners.

The two Departments concerned were notified of the railways' proposals and copies of the submissions made were sent to them.

The Post Office Department objected to the proposals chiefly on what might be termed legal and administrative grounds.

The Department of National Defence indicated that in their view no change was necessary since rates for the carriage of military personnel and materiel have been adjusted along with other rates, and it would be unwise to make a change in the present state of uncertainty in world affairs.

Since the Commission's hearings a new agreement has been concluded between the railways and the Postmaster General, setting new rates for the carriage of mails. Nevertheless the railways say that they are still dissatisfied with the present method of fixing rates and wish to be understood as persisting in their request to have this fixing done by the Board.

CONCLUSIONS AND RECOMMENDATIONS

All Government Departments except the Department of National Defence and the Post Office Department pay rates and fares which are determined by the Board.

Section 351 of the Railway Act enables the authorities to order the railways to carry mail, His Majesty's forces, supplies, etc., "with the whole resources of the Company (i. e. the Railways) if required".

The regulation of the rates in question is essentially a matter of Government policy and it should remain so. It is to be assumed that the responsible minister will from time to time propose adjustments in conformity with the value of the service rendered by the carriers.

6. SUBMISSION OF THE GOVERNMENT OF NEWFOUNDLAND

The Government of Newfoundland divided its submission into two parts, one dealing with transportation generally and the other with freight rates. The latter, however, was withdrawn on the grounds that the Newfoundland Government was taking it up with the Government of Canada and the Board of Transport Commissioners. Therefore only the first part of its submission will be dealt with here.

At the regional hearings the Government asked the Commission to make fifteen recommendations, but during the final argument Counsel for the province advised that three of these had been withdrawn: two dealing with highway communication, on the ground that they were of purely provincial concern,

outside the scope of this inquiry, and the third dealing with air transportation which Counsel advised had been submitted to the Air Transport Board.

The remaining recommendations may be summarized as follows:

1. That a military road be constructed from Gander Airport to the nearest ice-free port on the South Coast—Bay D'Espoir was suggested.
2. That the facilities at North Sydney and Port aux Basques are inadequate to handle the increased tonnage and that alternative outlets be provided for traffic to and from the mainland. The Province recommended Halifax and Saint John as alternatives to North Sydney and Bay d'Espoir, and St. John's and Corner Brook as alternatives to Port aux Basques.
3. That, in the event of these alternative outlets being provided, the all rail route privilege in the Terms of Union be made applicable to traffic moving through such alternative outlets.
4. That adequate facilities be furnished at Louisburg and over the Sydney and Louisburg Railway for the handling of traffic during the winter months, and that the additional transportation costs incidental to the use of Louisburg instead of North Sydney be absorbed in the through rate.
5. That the Newfoundland railway system be modernized to bring it into conformity with the standard system on the mainland with which it is affiliated.
6. Alternatively that improvements be made in the existing railway by reduction of gradients and elimination of curves.
7. That additional equipment in the way of rolling stock, locomotives, freight and passenger cars be provided adequate to meet the service to be performed.
8. That additional refrigeration facilities be provided on the trains and steamships operated by the Railway.
9. That additional coastal steamers be provided by the Railway to remove the dangerous condition of overcrowding which presently exists on the ships engaged in this service.
10. That adequate subsidies commensurate with the service performed be paid to the coastal service on a basis similar to that paid for services in the St. Lawrence River and the Gulf ports.
11. That an investigation be instituted with a view to the improvement of facilities at St. John's, Corner Brook and Port aux Basques.
12. That an inquiry be made into the feasibility of establishing a National Harbour at Bay d'Espoir, including the practicability of establishing a branch line of railway to the harbour to join the main line of railway and also to investigate the advantages or otherwise of establishing Bay d'Espoir as a free port.

CONCLUSIONS

1. With respect to the proposed military road, this is a matter entirely for the Department of National Defence and not a matter of transportation within the reference of this Commission.

2. The proposals Nos. 2, 3, and 4 may all be linked together. The proposals are tantamount to a request that there be more than one all-rail route to Newfoundland. This is not in accordance with the Terms of Union, nor is it a recommendation the Commission should make. If such a privilege were accorded to

Newfoundland it would lead to requests for similar extensions elsewhere. It must be assumed that at the time the Terms of Union were being negotiated careful consideration was given to the points chosen in both Newfoundland and Nova Scotia to be the termini of the all-rail route. It does not appear advisable to recommend that a matter which presumably was gone into with the greatest of care and so recently, should now be disturbed.

3. Proposals Nos. 4, 5, 6 and 7 and part of proposal No. 8 have to do with the provision of adequate facilities for handling traffic, modernization or improvement of the railroad and the acquisition of additional equipment. Obviously as conditions change additional equipment will be required and additional handling facilities at Port aux Basques and North Sydney will be necessary. The authorities will no doubt take into consideration matters of this kind. It may be pointed out that under the provisions of Section 312 of the Railway Act the Railway is obliged to furnish adequate and suitable accommodation for the receiving and loading of all traffic offered for carriage, and the Section contains provisions enabling the Board to order the Company to furnish accommodation having regard to all proper interests. The Commission is advised that the Railway has already provided some additional equipment and has more on order.

4. As to proposal No. 9, dealing with the question of additional coastal steamers, this would seem to be a matter for consideration by the Railway after it has had sufficient time to gather information based on operations, and if there are any complaints these should be made to the Department of Transport. It is not a matter concerning which any recommendation can usefully be made.

5. Proposal No. 10, concerning subsidies is a matter to be taken up with the Canadian Maritime Commission.

6. Proposal No. 11, regarding improved facilities at the ports of St. John's, Corner Brook and Port aux Basques, refers to matters to be taken up with the Department of Transport.

7. As to the establishment of a National Harbour at Bay d'Espoir, provision is made for dealing with this matter under the National Harbours Board Act. No additional legislation is required and it is not a matter concerning which the Commission should make a recommendation.

8. Consideration has been given to the proposal that Bay d'Espoir be made a free customs port; this is to say that goods be allowed to enter such a port for reshipment elsewhere without payment of Canadian customs duties. The establishment of a free port is a matter of national and even international concern, and representations concerning any such establishment should be made to the Canadian Government.

(On January 23, 1951, the Minister of Transport announced that authority had been obtained for the construction of a \$4,500,000 automobile, freight and passenger ferry to provide year-round service between Port aux Basques and North Sydney. The Minister said that he expected this new vessel to be completed in 1952, when it would replace the smaller vessel "Cabot Strait" now in use. The new vessel will be 320 feet in length and 68 feet in width and will have a gross tonnage of 9,500 and a service speed of 15 knots. It will provide space for about 83 vehicles and 300 passengers per trip. It will also be able to carry some 650 tons of cargo as well as a quantity of livestock.)

The Minister also announced that, in connection with the construction of the new vessel, provision had been made in this year's estimates for the commencement of the construction of ferry terminal facilities at Port aux Basques. He also said that the terminal docks on both sides of Cabot Strait and the new vessel would be operated for the Department of Transport by the Canadian National Railways.)

7. NEWFOUNDLAND RATES

Prior to the Union of Newfoundland with Canada on April 1st, 1949, Parliament enacted the Terms of Union.

Section 32 of such Terms reads as follows:

"32(1) Canada will maintain in accordance with the traffic offering a freight and passenger steamship service between North Sydney and Port aux Basques, which, on completion of a motor highway between Corner Brook and Port aux Basques will include suitable provision for the carriage of motor vehicles.

(2) For the purpose of railway rate regulation the Island of Newfoundland will be included in the Maritime region of Canada, and through-traffic moving between North Sydney and Port aux Basques will be treated as all-rail traffic.

(3) All legislation of the Parliament of Canada providing for special rates on traffic moving within, into, or out of, the Maritime region will, as far as appropriate, be made applicable to the Island of Newfoundland."

The Terms of Union were followed by the Statute Law Amendment (Newfoundland) Act, Section 13 of which reads as follows:

"13(1) Subject to this Section the Maritime Freight Rates Act, Chapter 79 of the Revised Statutes of Canada, 1927, applies mutatis mutandis to all lines of railway in the Island of Newfoundland that are subject to the legislative authority of the Parliament of Canada.

(2) For the purpose of the said Act the lines of railway situated in the Island of Newfoundland including the steamship services between Port aux Basques and North Sydney that are entrusted to the Canadian National Railway Company for management and operation shall from the date of and during the period of such entrustment be deemed to be included in the lines of railway collectively designated as the Eastern lines, the Island of Newfoundland shall be deemed to be included in the expression 'select territory' and through traffic moving by water between Port aux Basques and North Sydney shall be treated as all-rail traffic.

(3) Upon entrustment to Canadian National Railway Company of the lines of railway mentioned in subsection (2), Canadian National Railway Company shall forthwith file with the Board of Transport Commissioners for Canada tariffs of tolls applicable to the carriage of traffic within, to and from the Island of Newfoundland and such tariffs in so far as preferred movements are concerned, shall comply as far as appropriate with the provisions of the said Act.

(4) Notwithstanding the provisions of Sections 330, 331, 334 and 335 of the Railway Act the tariffs initially filed under subsection (3) shall be effective from the date of entrustment."

The Government of Newfoundland at the hearings at St. John's submitted a brief in which it was contended that the Terms of Union with respect to freight rates had not been fully carried out by the Canadian National Railways.

The Associated Newfoundland Industries and the Newfoundland Board of Trade made somewhat similar submissions, and in addition it was stated by the Association that:

"In determining the freight rate structure for Newfoundland, in so far as it affects the Province generally and secondary industry particularly, the Association feels that the matter must be looked at, not merely from the restricted viewpoint as dictated by a consideration of freight rates only, but rather from the over-all picture created by constitutional, geographic, climatic and other considerations."

At the time of argument held in Ottawa some months later, the Government of the Province withdrew its request for any recommendation or determination respecting freight rate matters for the reason that it had decided to deal directly with the Government of Canada and the Board of Transport Commissioners on the subject.

The Anglo-Newfoundland Development Company and the Buchans Mining Company at the hearing at St. John's also withdrew briefs which they had submitted previously.

The Associated Industries and the Newfoundland Board of Trade did not, however, withdraw their request for a determination of the matters submitted by them.

Briefly, the complaints are as follows:

1. That the further east of Quebec and Ontario Maritime industry is situated (as is the case with Newfoundland), it becomes correspondingly more and more difficult for such industry to survive, as the cost of obtaining raw materials from Ontario and Quebec, upon which Maritime industries depend, increases with distance; therefore, unless local industry in Newfoundland generally and St. John's in particular receives special treatment, the death of industries in Newfoundland is a foregone conclusion.

2. That Newfoundland being an island, a natural barrier to trade is created by broken transportation across the Cabot Strait, longer time in transit with winter delays caused by ice in the gulf and heavy snow on the Newfoundland Railway, with additional cost of packaging and extra insurance. These factors, it is contended, greatly increase freight costs.

3. It was alleged that the cost of transportation is prohibitive for distribution of goods in and around Newfoundland as carried on by the Canadian National Railways and its coastal system of steamships.

4. That prior to Union the industrial economy of Newfoundland evolved under its own protective tariff system and this system has now been swept away.

5. That by reason of its many complexities the Newfoundland operation of the Canadian National Railways cannot be dealt with properly as part of the Atlantic Region of that system.

6. That the coastal services and freight rates of such services are not satisfactory. It was suggested that the rates are not competitive with privately-owned freight and passenger craft; the increases made since 1942 are excessive; classification of freight on these steamships should be simplified; certain classes of goods cannot stand present coastal rate levels; there is no provision in coastal rates for redistributed goods, and the five cents per package toll at public wharves should be abolished.

7. That facilities are not adequate for the transportation of all merchandise to the Island with the quickest possible despatch.

8. That the arrangement for distributing carloads of flour and feed on the Island by breaking up carload shipments into small lots of 100 bags is not permanent.

9. That the arbitrariness in the rates for transshipping flour to the south coast ports and to Placentia Bay as published by the Canadian National are very low and tend to drive independent vessels out of the traffic.

10. That there is inefficiency in large coastal vessels calling at every small port, and a lack of transfer facilities to more economical smaller vessels for distribution of goods to small ports.

11. That the mixing privilege previously provided on the Island railway whereby all sorts of materials could be mixed at the 5th Class rate has been cancelled.

12. That there is a shortage of warehouses at points in Newfoundland suitably designed for the storage of vegetables and the cold storage of eggs, poultry, etc.

13. That the tourist industry has not been developed fully.

14. That the additional charge of 50 cents per cask of fish which is made by the Canadian National steamship service when vessels call for fish at ports other than their regular port of call is unreasonable.

15. That there is discrimination in rates on fish via vessels from Newfoundland to Halifax and/or New York when transshipped at those points for Central and South America. (This latter allegation is based on the fact that on movements of fish by rail from points on the mainland to Saint John and Halifax for export reduced rates are given.)

16. That the basis of the rate structure is unconstitutional and does not conform to that of the mainland. Numerous examples were submitted on distance comparisons, which, it was said, confirm that many rates are excessive; that there was a very small decrease in some through rates after Union and that some Newfoundland rates were 28% above Maritime levels (this having reference to the charging of standard mileage rates on the Island rather than "town tariff" rates.)

The Associated Newfoundland Industries suggested the following remedies:

1. "Secondary industry must be fostered and maintained if calamitous repercussions to the economy of Newfoundland are to be avoided."
2. "Improvements must be made in existing railway and port facilities."
3. "Newfoundland Railway and coastal operations should become independent of the Atlantic Region and come under the direct supervision of Montreal."
4. "Readjustment of local rates for Railway and Coastal Services should be adjusted on the recommendation of permanent Advisory Committee to the Railway Management."
5. "A new rate structure should be made applicable immediately to Newfoundland, calculated to ensure:
 - (a) Special rates on raw materials moving from the mainland for processing in Newfoundland, so that the laid-down cost to manufacturers in Newfoundland will be equalized to the cost to manufacturers elsewhere in the Dominion.
 - (b) Special rates within Newfoundland providing economic distribution within and throughout the Island.
 - (c) Special rates to Newfoundland manufacturers to create equality of opportunity in competing for Dominion-wide markets.
 - (d) In general, the rates for Newfoundland to be on such a basis as will facilitate marketing in the Maritime Provinces to the extent necessary to offset the geographic and economic disadvantages arising out of our insular position, and as the most easterly Province of Canada, thus providing Newfoundland with a freight rate structure truly competitive with that applying throughout the Maritimes."
6. "The regulation of freight rates should include carriage of goods by sea as well as rail traffic by placing the same under the jurisdiction of the Maritime Commission or some other statutory body with the necessary regulatory powers."

The Newfoundland Board of Trade suggested the following remedies:

1. That the following alternative steamship or car ferry routes be provided:
 - (a) From Campbellton, N.B., to Corner Brook for all movements between Corner Brook and Bishop's Falls (necessitating the building of a spur about 300 feet long from the pier at Corner Brook to the railway);
 - (b) Traffic for the Avalon Peninsula should be moved by water from Montreal, Halifax and North Sydney to St. John's, Newfoundland, and, to

accomplish this object, the Canadian National Railways should use the Admiralty property on the north side of the harbour at St. John's and build a spur about 600 feet long from the main line; and

- (c) The railway should provide two railway car ferries, able also to carry 30 or 40 automobiles, one on the west coast and the other on the east coast.

It is suggested that by establishing the foregoing arrangements the rates to and from the eastern portion of the Island could be reduced.

2. That St. John's be made a national harbour.

The position with respect to these complaints and suggested remedies is left in a somewhat confused state, because, of, *First*, an application of the Province of Newfoundland to the Board of Transport Commissioners:

"... for an Order directing the Canadian National Railway Company to cancel the tariffs presently in effect by that Company relative to the movement of traffic into, through and out of the Province of Newfoundland, and to substitute therefor tariffs and tolls based on the rate structure presently in effect in relation to the movement of traffic within, into and out of the region heretofore known as the Maritime Provinces."

This application was heard by the Board on December 14, 1949, and decision was rendered on February 14, 1950, 39 J.O.R. & R. 293, solely on the point that "all that the parties to the application wish to have at present is a decision on the question whether subsections 2 and 3 of Section 32 of the Terms of Union, and Section 13 of the Statute Law (Newfoundland) Amendment Act preclude the respondent (the Canadian National Railways) from exercising in Newfoundland the right which it would otherwise have under the Railway Act — that is, the right to discriminate in rates because of dissimilarity in circumstances and conditions".

The Board stated: "We think it is expedient to decide this preliminary question before proceeding further with the case", and answered the question "No."

The Board further stated with respect to subsection (2) of Section 32 of the Terms of Union:

"We think that the obvious purpose of this subsection is: first, to make Newfoundland part of the Maritime region in order that Newfoundland may have the benefit of the Maritime Freight Rates Act in respect to all freight movements between points in Newfoundland and points in the rest of the Maritime region; and secondly, to provide that carriage by water between North Sydney and Port aux Basques is to be regarded as carriage by rail for rate-making purposes."

It will be noted that the Board did not, at that time, make any decision as to whether the rate structure in Newfoundland is to be in general conformity with the rate structure in the other Maritime Provinces, but left that question for further determination. The Board held a hearing on that subject during the last two weeks of October, 1950;

Second, the withdrawal from consideration of the brief of the Provincial Government respecting freight rates;

Third, the entire withdrawal of the briefs of the Anglo-Newfoundland Development Company and the Buchans Mining Company;

Fourth, the submission of briefs to the Board of Transport Commissioners by the Provincial Government and the Anglo-Newfoundland Development Company (but not by the Buchans Mining Company) at the hearing at St. John's, Newfoundland, in the latter part of October, 1950; and

Fifth, the fact that the other parties who did not withdraw their briefs also submitted the same or similar briefs to the Board of Transport Commissioners at the said hearing at St. John's.

All of these facts have made it difficult to determine on what points useful advice may be given. However, it is considered advisable to deal with those matters which are before the Commission and which are within its terms of reference.

1. The first is the statement in subsection (2) of Section 32 of the Terms of Union that "for the purpose of railway rate regulation" the Island of Newfoundland "will be included in the Maritime region of Canada". The expression "Maritime Region" is not defined in the Terms of Union, nor is it found or defined in the Railway Act, nor in the Maritime Freight Rates Act, in the Transport Act, nor in any other relevant legislation.

Evidence has been submitted, however, that until July 1, 1949, the railways had divided Canada into five regions for rate-making purposes: (1) the Maritime region, which corresponds to what is known as the "Select Territory" under the Maritime Freight Rates Act; (2) the Ontario-Quebec or Central region; (3) the Superior or Algoma region; (4) the Prairie region, and (5) the Pacific region. (The last region was made part of the Prairie region on July 1, 1949, by Order of the Board.)

It appears that the term "Maritime Region", although not defined in any Act relating to "rate regulation", was probably intended to mean the term used by the railways in describing their freight rate zone east of Levis, Diamond Junction and Megantic, Quebec. If that is so it would follow, for example, that if there are "town tariff rates" in that region, Newfoundland would be also entitled to have town tariff rates; if there are commodity rates on potatoes in that region, Newfoundland would be entitled to similar rates, and so on.

It may be observed that at the recent hearings before the Board in Newfoundland a witness for the Canadian National was examined upon the question of the publication of distributing class rates between the following points and other points on the Island: St. John's, Corner Brook, Grand Falls, Bishop's Falls, Port aux Basques and Lewisporte.

2. The Commission is informed that the Canadian National Railways has been and is now making improvements in port facilities for the transfer of freight to and from Newfoundland, and for new rolling stock on the Island.

3. The Commission does not consider that the question of transferring supervisory authority from the Atlantic region of the Canadian National Railways to Headquarters at Montreal is one upon which any useful recommendation can be made.

4. It is not considered that it would be proper for the Commission to recommend the appointment of a permanent Advisory Committee to the Canadian National's management on the Island as that Committee would not have any responsibility for the financial results of the railway.

5. (a) As to the request that special rates be granted on raw materials moving from the mainland for processing in Newfoundland in order that the laid-down cost to manufacturers in Newfoundland may be made equal to that of manufacturers in other parts of Canada, this is not a principle adopted anywhere else (except to the extent that rates may be tapered for longer distances), and its acceptance cannot be recommended.

(b) Pending the implementation of the recommendations made in the chapter on Equalization, adoption of "town tariff" rates on the Island would meet to some extent the suggestion of "special rates within Newfoundland". The Commission is informed also that certain other freight concessions are applicable

only within Newfoundland and not elsewhere in Canada, such as low rates for the encouragement of vegetable growing, the stop-off privileges for unloading of small lots of flour and feed at carload rates, and certain other concessions.

(c) As to the special rates suggested in 5 (c) above, the same answer should be given as in the case of paragraph (a).

(d) It is not recommended that the railway management go beyond the Terms of Union in providing a rate structure for Newfoundland, nor beyond the terms of the Railway Act, as modified by the Maritime Freight Rates Act. The determination as to whether such rates are now at their proper level is one to be decided by the Board of Transport Commissioners.

6. The regulation of rates for carriage of goods by sea is dealt with elsewhere in this report.

7. It has not been established that additional routes and the provision of car ferries are necessary at present with respect to the routing of freight to and from Newfoundland. If the railway management finds it more economical to establish such routes and facilities they will presumably be provided from time to time.

8. The reduction of freight rates by the re-routing of traffic to or from the eastern portion of the Island is also a matter for railway management, but it is to be observed that Parliament provided only for the route via North Sydney-Port aux Basques.

9. The procedure to be followed in having a harbour placed under the administration of the National Harbours Board is set out in Section 8 of the National Harbours Board Act, and it is not advisable to recommend any change in this procedure.

10. As to the general complaint (No. 16 above) that the rate structure of Newfoundland is unconstitutional and does not conform to that of the mainland:

- (a) All questions concerning the constitutionality of the rate structure are matters for determination by the Board, or, in a proper case, by the Supreme Court of Canada.
- (b) The technical aspect of the rate structure is now before the Board and at this writing has been argued and is awaiting decision.

It must, therefore, be left to the Board to use its technical knowledge and exercise its judgment as to what constitutes a proper relationship of rates to and from Newfoundland for distances longer than exist in the so-called "Maritime Region" on the mainland.

11. Another matter with which the Commission is asked to deal is the incidence on secondary industry of the change-over from the Newfoundland Government's customs tariff prior to Union to the present Canadian customs tariff. It was suggested that as some industries are now required, as a result of the change, to purchase their raw materials in the other provinces of Canada, rather than in the United States, differences in the price levels of such raw materials should be adjusted by requiring the railways to carry such raw materials at lower rates than called for by the general rate level of the "Maritime Region".

Any economic disadvantage caused by reason of the change in customs tariff was a necessary incident to the Act of Union. It is not one which can or ought to be remedied through the instrumentality of freight rates. Freight rates to, from, and within Newfoundland must hereafter be dealt with by the

Board of Transport Commissioners. It must be assumed that the Board, in disposing of all questions affecting rates to and from Newfoundland, will be guided by the same principles as apply in the case of the other Provinces.

(Since the foregoing section was written final judgment has been delivered by the Board of Transport Commissioners in the case referred to above as "an application by the Province of Newfoundland for an Order directing the Canadian National Railways to cancel certain tariffs then in effect and to substitute other tariffs therefor". This is the case in which a preliminary judgment was delivered on February 14th, 1950, 39 J.O.R. & R. 293.

In this final judgment, dated January 22nd, 1951, the Board finds in favour of the province and against the railway upon the question of the interpretation to be given to the language used in Section 32(2) of the Terms of Union where the expression "Maritime Region" is found. In reference to the words of the subsection the judgment says, "They must mean that, notwithstanding certain dissimilar, disadvantageous circumstances and conditions pertaining to Newfoundland, this province is to be included rate-wise in the Maritime Region on a general level of rates similar to the other Maritime Provinces." The judgment then proceeds to give the Province the benefit of this interpretation of the subsection by directing the railway to prepare certain necessary tariff amendments, including the elimination of surcharges, to be made effective on or before March 1st, 1951.

On the question of town tariffs and commodity rates the judgment points out that these tariffs and rates are usually determined by negotiations between the railway and the interested parties. It suggests that negotiations of this sort be carried on in this case and says that the Board will give consideration to an application pertaining to any specific dispute relating thereto.)

8. GRAIN RATE VIA THE NATIONAL TRANSCONTINENTAL RAILWAY TO QUEBEC FOR EXPORT

The National Transcontinental Railway between Winnipeg and Moncton, which was constructed by the Canadian Government, now forms part of the Canadian National Railways.

In the General Freight Rate Investigation 1925-1927, the Board of Transport Commissioners dealt with the rate on grain via that line from Fort William, Port Arthur, Westfort and Armstrong, Ontario, (which are the dividing points between Western and Eastern Canada) to Quebec City for export, and by General Order No. 448 ordered the rate reduced from 34½ cents per 100 pounds on wheat to 18.34 cents. As a result of the post-war general percentage increases the latter rate has become 26 cents per 100 pounds.

The City of Quebec recommends that "a thorough investigation of the particular circumstances surrounding the establishment of such rate (as established by General Order 448) be undertaken with a view to implementing Sections 42 to 45 inclusive of the National Transcontinental Railway Act" (3 Edward VII, Chap. 71.) The City of Quebec refers to the grain rate via the Transcontinental as a "statutory rate" and urges that it be restored.

CONCLUSIONS

There are now only two statutes which create statutory rates and these are Section 325(5) of the Railway Act (the Crowsnest Pass Grain Rates) and the Maritime Freight Rates Act.

The Board appears to be completely free to exercise all its powers with respect to railway rates, save only for the two exceptions referred to.

So far as ascertained it is not proper to call the grain rate to Quebec a "statutory rate." The recent action of the Board in increasing this rate indicates that it is not its view that the rate prescribed in General Order No. 448 is statutory.

No protest appears to have been made to the Board on the subject. The City of Quebec is free to make an application to have the rate reduced if it thinks it has any statutory rights which the Board is violating, and should the Board refuse such application the City then has further recourse to the Supreme Court in the matter.

The Commission has no recommendation to make on this subject further than appears from what has been said above.

9. CLAIM OF THE CITY OF QUEBEC TO BE INCLUDED UNDER THE MARITIME FREIGHT RATES ACT

The City of Quebec and the Chamber of Commerce of the City of Quebec submitted that the Maritime Freight Rates Act should be amended to include Quebec City in the "select area" defined by that Act.

The brief referred to the findings of the Duncan Commission as a "rather arbitrary separation" and claimed that it constituted discrimination against the Port of Quebec.

In 1930 pursuant to Order in Council P.C. 1291 the Board was instructed to inquire into and report to the Government upon the subject matter of complaints which were made by Quebec City following the passage of the Act. Hearings took place in Quebec, Halifax and Saint John. The jurisdiction of the Board to inquire into the matter was questioned and the hearings scheduled for March 1931 in Ottawa were therefore postponed and nothing further was done.

Quebec now alleges that the Act creates an artificial disadvantage to the Port of Quebec, which should be removed by inclusion of this port in the "select area" under the Maritime Freight Rates Act.

CONCLUSIONS

The findings of the Duncan Commission were based upon (1) pre-Confederation promises made to the Maritime Provinces to enable them to obtain entry into the markets of Central Canada; (2) the greater increases in rates on the Intercolonial Railway since 1912 as compared with increases in the rest of Canada, and (3) the circuitry of the route taken by the Intercolonial Railway. The Duncan Commission accordingly recommended a reduction in rates in the Atlantic Division of the Canadian National Railways and said: "For this purpose we cannot regard the Atlantic Division as ending at Riviere du Loup and Monk, which are its present limits. The divisional points should in our view be Diamond Junction and Levis, *Diamond Junction being the point at which the Transcontinental Railway meets the old Intercolonial Railway, and Levis the point to which, in 1879, the Intercolonial Railway was extended.*"

It will be seen therefore that the foundation for the choice by the Duncan Commission of the limits of the "select area" lies in the historical terminal of the Intercolonial Railway.

Bearing in mind (a) the historical background for the claims of the Maritimes for relief; (b) the tying in of those claims with the purposes of the construction of the Intercolonial Railway, and (c) the fact that some point or points must be chosen as the limit for the "select area", the choice made by the Duncan Commission was a natural one.

It is probable that if the area were extended to include the City of Quebec, other claims for its extension would be made, perhaps with equally plausible arguments.

10. ARBITRARIES OVER MONTREAL

An arbitrary is a factor in a through rate; it is usually expressed in cents per hundred pounds or per ton, and is added to another rate at an intermediate point to make a through rate from the point of origin to the point of destination. Thus the freight rates between points west of Montreal and points in the Maritime Provinces are constructed by adding "arbitraries" to the Montreal rates. For example, the first class rate from Toronto to Montreal is \$1.20 per 100 pounds, the arbitrary of 47 cents per 100 pounds is added to the rate to produce a through rate to Saint John of \$1.67. On westbound traffic, by virtue of the operation of the Maritime Freight Rates Act, the arbitrary is 31 cents, so that the through rate from Saint John to Toronto is \$1.51 per 100 pounds.

The Maritime Board of Trade and the Provinces of New Brunswick and Nova Scotia complained that the application of the post-war horizontal increases to the arbitraries had "accentuated the disadvantage of distance" to the industries in the Maritimes on westbound traffic to markets in the Central Provinces, and to consumers in the Maritimes on eastbound traffic.

The Maritime Board of Trade contended that the arbitrary over Montreal should never be changed but kept constant to maintain the differential or to "maintain the relationships" which had existed immediately after the passing of the Maritime Freight Rates Act and to lessen the impact of horizontal increases when they came along.

In its final argument the Board of Trade stated that the arbitraries over Montreal constitute an important part of the Maritime rate structure, and while the Board of Trade made no recommendation to provide for maintenance of the arbitraries by amendments to the Maritime Freight Rates Act or the Railway Act, it "strongly commends the maintenance of the arbitraries as existed over Montreal on April 7, 1948, as a simple and effective method of lessening the impact of percentage increases in inter-territorial rates".

The railways contend that the use of arbitraries is merely a convenient method of making rates. Arbitraries they say should fluctuate by reflecting increases and decreases in the general level of rates and cannot be permanently fixed amounts. They argue that if the arbitrary is not increased, the factor of the joint through rate east of Montreal would never bear any share of the increase.

From 1900 to 1916 the arbitrary over Montreal on first class traffic to or from Saint John, N.B., for example, was 20 cents per 100 pounds, and this has changed over the years as follows:

	Saint John Arbitrary over Montreal	
	To or from Eastern Canada	To or from Western Canada
On December 1, 1916.....	24¢	24¢
March 15, 1918.....	27½¢	26½¢
August 12, 1918.....	34¢	33¢
September 13, 1920.....	47½¢	46½¢
January 1, 1921.....	45½¢	44½¢
December 1, 1921.....	42½¢	41¢
August 1, 1922.....	42½¢	24¢
April 14, 1924.....	32¢	24¢

	Saint John Arbitrary over Montreal			
	Eastbound	Westbound*	Eastbound	Westbound*
July 1, 1927.....	32¢	21¢	24¢	12¢
Present time (November, 1950).....	47¢	31¢	34¢	18¢

*This change was brought about by the Maritime Freight Rates Act. The rate quoted is under the Maritime Freight Rates Act and is 80% of the total amount received by the railways for the haul as far as Lévis, Québec, the other 20% being paid by the Government to the railways.

In *Re Freight Tolls 1922*, 12 J.O.R. & R., page 61, the Board, referring to the arbitraries over Montreal, said: "These arbitraries were, of course, advanced along with other rates, arbitraries or proportionals under the various subsequent changes." The Board pointed out the importance of the arbitraries and said that this system of rate making "is an integral part of the whole class rate structure in Eastern Canada and could not be changed without involving disturbance of the entire rate fabric in this territory. As the class rate structure in Eastern Canada is not being disturbed at this time no change should be made in these arbitraries". The Board then went on to say that a different situation existed with reference to rates between Eastern Canada and points west of Fort William, and said: "Points east of Montreal are put to an undue disadvantage in comparison by the addition to the Montreal rate of scale of arbitraries that does not indicate an equitable continuation of a long-haul rate." The Board held that these arbitraries over Montreal should be scaled down on traffic to or from Western Canada. In 1924 the railways voluntarily reduced the arbitrary on traffic to or from Eastern Canada, as indicated in the preceding table.

To sum up, the Board has recognized the importance of these arbitraries in the system of rate-making and over the years it has raised and lowered them; they have not been constant.

CONCLUSIONS

1. An arbitrary is a part of a through rate, and it would be contrary to sound principles of rate-making to keep the arbitrary portion of the through rate at a constant figure regardless of changes in the over-all levels of rates.

2. Whether or not the same percentage of increase should be added to or reduction should be deducted from an arbitrary in any given case is a matter which the Board should decide on the principles which it adopted in the 1922 reduction case, namely after considering the relevant facts and the effect on the through rates.

3. In increasing an arbitrary which forms part of a through rate from or to the select territory under the Maritime Freight Rates Act, the following must be borne in mind:

- (a) Under Section 3 of that Act the tariffs of tolls in respect of preferred movements on July 1, 1927, were ordered to be cancelled and other tariffs showing a reduction of approximately 20 per cent were ordered to be substituted;
- (b) The Board is authorized and directed to maintain such substituted tariffs on the general level approximately 20 per cent below the tolls existing on July 1, 1927, while the cost of railway operation in Canada remains approximately the same as at the said date;
- (c) But the Board may allow the increase or reduction of such tolls or tariffs from time to time to meet increases or reductions, as the case may be, in such cost of operations; and

- (d) The arbitraries over Montreal fall within the words "tariffs of tolls" and "tolls or tariffs" used in Section 3 of the said Act and may be properly increased or decreased subject to the limitations contained in Section 3, in the same manner as any other tolls may be increased or decreased under the said Act, subject of course to the provisions of Sections 7 and 8 of the said Act.

4. The duty of the Board is the same when it is considering an arbitrary which is a factor of a through rate in respect of preferred movements under the Act as it is when considering any other rate in respect of preferred movements; the Board's duty under Section 8 is to consider whether the tariff may "destroy or prejudicially affect" the statutory advantages conferred by the Act.

5. The simple expedient of making the arbitrary constant does not appear to be sound in principle, either to "lessen the impact of horizontal increases" or to "maintain differentials or relationships".

6. If the application of increases to the arbitrary has destroyed or prejudicially affected the "statutory advantages", the rate should be attacked on that ground, and the Board could then decide the matter upon complaint. This is the proper approach to the problem.

7. As has been stated by the Board, the use of arbitraries in the system of rate-making is an integral part of the whole class rate structure.

RECOMMENDATIONS

It is not advisable to amend either the Railway Act or the Maritime Freight Rates Act to provide for constant arbitraries over Montreal. Each case concerning arbitraries should be decided on its own merits under existing legislation.

11. INADEQUATE RAILWAY SERVICE

There were relatively few complaints made to the Commission of inadequate service by the railways. Those that were made came from three sources.

First from Prince Edward Island. Extensive evidence was given that the quality of service throughout the entire province is generally poor, that the train service is faulty, that schedules are not kept, and that very substantial delays occur in the delivery of less than carload freight.

The second complaint was made by the Council of Economic Planning of the Saguenay Region, Quebec. It alleged that poor equipment and poor service hindered the development of this region. The Council's Brief stated that the railways had not accomplished progress consonant with the development of the region. It was stated that in sixty years there had been little change in the railway, although the population had increased six or seven times, and it was urged that a complete investigation be made of the whole railway problem for the Saguenay Region. Particular reference was made to the slowness in freight traffic, which results, it was said, in people using trucks, even at higher cost.

The third complaint came from the Province of Newfoundland, and is dealt with under the heading "Submissions of the Government of Newfoundland".

CONCLUSIONS

Section 312 of the Railway Act provides that railway companies must, according to their powers, furnish adequate and suitable accommodation for the receiving, loading and unloading of all traffic for carriage upon the railway, and without delay carry and deliver all traffic; and they are likewise obliged to furnish such other service incidental to transportation as is customary or usual in connection with the business of a railway company and as may be ordered

by the Board. If in any case such accommodation is not, in the opinion of the Board, furnished by the company, the Board may order the furnishing of the same having regard to all proper interests. All of the foregoing, of course, is subject to the limitations of the powers of the company itself.

With respect to the complaints from the Saguenay Region, the situation has changed in some measure since the sittings of the Commission came to an end. In June 1950, the Canadian National Railways assigned Diesel power to freight service in this territory. However, no diesels are being used in passenger service.

In the case of Prince Edward Island a change has also occurred. Complete dieselization of the railway took place in June 1950. This applies to all trains, passenger, freight and mixed. No change has been made in the time schedule on the Island, but the Commission is informed that train service has improved in this respect with the use of Diesel power.

The Commission is not in a position to make recommendations with respect to any of the matters still outstanding. It would require full scale investigations and hearings and proper machinery is now set up under the Act for dealing with situations of this kind.

12. TRANS-CANADA HIGHWAY

Several of the Provincial briefs which were presented to the Commission dealt incidentally with the Trans-Canada Highway. They stressed the necessity of proceeding with the completion of the highway and the importance of it to the country as a whole. There were also some suggestions made as to the route the highway should follow.

There was, however, one brief presented by an organization called The Trans-Canada Highway System Association which dealt solely with the proposed highway, and its submissions may be summarized as follows:

- (a) That the Highway is important for national defence and for the economy of the country and must therefore be planned on a national rather than a provincial basis.
- (b) That the selection of the route therefore is within the jurisdiction and responsibility of the Federal Government.

The brief asks for the appointment of a Federal Highway Commission or authority to study all phases of construction and the route which the Highway should take.

CONCLUSIONS

It is not necessary to say anything as to the importance of the Highway from the point of view of national defence or the economy of the country, but it seems to be important to the Provinces individually as well as collectively.

Under these circumstances there can be no useful purpose in appointing a Commission or other body to attempt to compel the respective parties to agree upon a route.

There is no doubt that the authorities in both the Provincial and Federal Governments will give proper attention to the route and to all engineering phases with respect to the highway.

The Commission has been advised that generally speaking the Federal Government and the majority of the Provinces have concluded agreements satisfactory to them; accordingly no recommendation can be made at this time as to any changes in the legislation affecting the construction of this highway.

13. RAILWAY OWNERSHIP OF TRUCK LINES

The Manitoba Federation of Agriculture and Co-operation and the Anglo Canadian Oils Limited stated that the railway companies should not be permitted to go into the ownership and operation of truck lines because, they said, this would have the effect of stifling competition. The Calgary Board of Trade, the Edmonton Chamber of Commerce, the Cities of Edmonton and Calgary and the Alberta Co-operative Union expressed the view that railways should not be allowed to purchase truck lines unless they were "complementary" to rail service. The British Columbia Feed Manufacturers Association stated that railways should only be allowed to operate truck lines as "supplementary" to the railway system. The difference between "complementary" and "supplementary" in this connection was not made clear. The Canadian Industrial Traffic League was of the opinion that the railways should be allowed to go into the trucking business but only as long as their operations do not tend to stifle competition.

CONCLUSIONS

It would seem that operation of trucks may be an essential and complementary part of railway operation, more especially in view of changing conditions. Under these circumstances it does not appear reasonable that railways should be prohibited from operating trucks or truck lines. There is no evidence to show that there is danger at present of the railways stifling competition by ownership of trucks. This would be a matter to be dealt with if and when the occasion arises.

14. THE RAILWAY GRADE CROSSING FUND

The Railway Grade Crossing Fund was established in 1909 and provided federal assistance for the protection, safety and convenience of the public where a railway and a highway cross each other at the same level.

During the depression period from 1930-39 Parliament appropriated large sums to eliminate level crossings as an unemployment relief measure.

Crossings are protected in various ways, for example, by signs, cattle guards, low grade approaches, improvement of sight lines, flashing lights, bells and grade separations.

From 1909 to 1947 approximately \$44 million was spent, \$12 million of which was contributed by the Federal Government through the Grade Crossing Fund and votes for unemployment relief. The railways paid about \$16.5 million, and highway authorities the remainder. These sums are exclusive of (a) operating and maintenance costs; (b) costs of widening, improving or maintaining existing subways and overhead bridges; (c) cost of grade separation where the paramount purpose of the work is railway or highway improvement rather than protection of the public; and (d) costs incurred in connection with railways built since May 19, 1909, the date the original Act was proclaimed. The rule in the latter case is that the "junior road" (that is the railway company or the highway authority which has built the new facility across the "senior" or previously existing road) will pay the whole cost of protection.

Under the provisions of Sections 256 to 267 of the Railway Act, the Board of Transport Commissioners is vested with power to order grade crossing elimination or protection by automatic signal devices or otherwise whenever it deems such measures are necessary on grounds of public safety.

The fund set up under Section 262 is replenished annually by appropriation from the Consolidated Revenue Fund of Canada, and the fund so set up is administered by the Board, which has power to make contributions therefrom. Under the Section as it now stands contributions are limited to 40 per cent of the total cost of actual construction work with a maximum of \$150,000 for any

one project. (By amendment in 1950 this maximum was increased from \$100,000 to \$150,000.) Section 262(2) provides that any province may add to the fund upon its own terms, but to date none of the Provinces has so contributed, although several have contributed to the cost of specific works, which have been approved by the Board.

Costs of grade separations vary, and, as the Commission is advised, average about \$300,000, but have reached as high as \$700,000.

The railways allege that if the program of grade crossing elimination is accelerated, it will impose an insupportable burden on them unless the fund is increased and the limitations now imposed upon contributions from the fund are altered.

The usual practice of the Board is to apportion between the railway and the highway authority the balance of the cost remaining after the contribution from the fund.

THE RAILWAYS' SUBMISSIONS

The railways stated that (a) the contribution limited to \$100,000 (now \$150,000) is insufficient under present day conditions because of increased costs of construction; (b) the imposition of any maximum is illogical and should be deleted from Section 262, and (c) that if it is proper for a percentage of the cost to be assumed by the fund it is unfair to prevent that percentage from being granted because of the operation of a fixed limit in the statute.

The railways contended that the additional hazard that may now exist at grade crossings is not attributable to them. There has been, they say, a complete reversal of the situation which existed in 1909 when the sections were passed. At that time the increasing speed of trains caused the need for additional protection; now, however, it is the revolution in highway traffic which has increased the hazards, and although the railways have not created the additional need for the grade separations, requiring expensive overhead bridges and subways, nevertheless they are having to bear a great deal of the expense. They contend that this is unjust and that the cost should be borne largely by the highway authorities.

The Canadian Pacific Railway accordingly requested that contributions from the fund should be raised from 40 per cent to 70 per cent; the Canadian National asked that they be raised to 75 per cent.

The Province of New Brunswick proposed that the cost, after contribution of 70 per cent from the fund, be apportioned 20 per cent to the railways and 10 per cent to the provinces and municipalities.

The railways contend that the power of apportionment should be left to the Board, and that a fixed formula would be unfair and impracticable.

It has been held that under the Act as it now stands, no provincial contribution may be ordered.

Both the Canadian National and Canadian Pacific railways proposed amending Section 259 of the Railway Act to provide for assessments against the Crown, the intention being to levy these assessments against the provinces.

Both railways urged the repeal of Section 260 of the Railway Act. Under this section if the line was constructed after May 19, 1909, the railway must bear the entire cost unless there is an agreement with or contribution from a municipality, person or corporation, as provided in the said section. The railways contend that it is no longer logical or justifiable to treat crossings that came into being before a certain date in one way, and those which came into existence after that date in another way.

The Canadian National Railways in its proposals went considerably further than the Canadian Pacific. The Canadian National wants to place a limit on the contribution which the Board may order the railways to make, this limit to be

50 per cent of the difference between the total cost and the contribution from the fund or to the capitalized benefits accruing to the railway, whichever is the lesser, and proposed an amendment to Section 259 to bring this about.

The Canadian National's proposed amendment to Section 262 is also broader than that of the Canadian Pacific, in that it includes the costs of maintenance and operation as well as of construction.

The Canadian National proposed an amendment to Section 264 which would preclude the Board from issuing an order to widen, or strengthen a bridge or subway unless there was a contribution from the Grade Crossing Fund. The grounds for their proposal are that there should be a contribution for rebuilding a structure as well as for building a new one, because the changed traffic conditions which require the rebuilding, widening or strengthening of the structure are not railway traffic conditions, but rather highway traffic conditions.

To sum up, both railways urge (a) that Section 259 be amended to bind the Crown in the right of the provinces; (b) that Section 260 be repealed so that all railway crossings regardless of the date when built should be treated on the same footing; (c) that Section 262(2) be amended to eliminate the \$150,000 maximum limit of contribution from the Grade Crossing Fund for any one project; (d) that Section 262 be amended to change the 40 per cent contribution from the Fund to 70 per cent (C.P.R.) or 75 per cent (C.N.R.).

The Canadian National Railways further proposes that Section 264 be amended so as to provide that the Board may order the rebuilding, widening or strengthening of bridges, subways, etc., only in cases where there is a contribution from the Fund.

THE PROVINCIAL SUBMISSIONS

Manitoba, Alberta and Saskatchewan opposed the amendment to bind the Crown in the right of the provinces, and also the proposal that the \$150,000 limit be eliminated. They favoured the percentage being increased from 40 per cent to 70 per cent or 75 per cent. They opposed the Canadian National amendments to both Sections 262 and 264. They approved the proposal that the Fund should be used for operation and maintenance as well as installation costs.

New Brunswick opposed the Canadian National Railway amendment limiting the railways' contribution to 50 per cent of the cost but agreed to the province being bound, subject, however, to a proviso that the total cost ordered to be paid by the province or municipal corporation should not exceed 10 per cent of the cost of the work.

These four Provinces opposed the repeal of Section 260.

CONCLUSIONS

1. Whether or not the Crown in the right of the province could be bound by a statute of Parliament presents a legal question and one on which the Commission should not venture to express an opinion or offer any recommendation for legislation. Parliament seems to have recognized either the difficulty inherent in such a situation or the lack of any necessity to attempt to bind the Provinces, and has accordingly passed Section 262(3) of the Railway Act under which it is provided merely that the Provinces are at liberty to contribute to the Fund under such conditions and restrictions as they themselves may impose.

2. In 1919 the amount to be contributed for one project was limited to \$25,000; in 1928 this limitation was increased to \$100,000, and in 1950 was again increased to \$150,000. It appears that Parliament has given careful consideration to this matter from time to time and as late as in 1950. There seems to be no reason to recommend the elimination of the maximum amount so recently set.

3. Parliament has for a considerable number of years appropriated \$500,000 per annum to the Fund and in 1950 increased the appropriation to \$1,000,000 for six consecutive years beginning the first of April 1951. It appears that the question of the amount of money to be appropriated for works of this kind, and the conditions under which the Board is to make contributions from such appropriations is peculiarly a matter for Parliament. Accordingly there is no recommendation to be made on the subject, more particularly as in the case referred to in the immediately preceding paragraph, Parliament has taken very recent action in fixing the amount.

4. The request to increase the 40 per cent to 70 per cent or 75 per cent seems to be based on the unjustified assumption that there is a primary obligation upon Parliament to provide financial assistance to the railways in the matter of level crossing elimination or protection. The primary obligation rests upon the railways, and the amount of assistance which Parliament may provide is for it to determine. This Commission is not qualified to advise Parliament as to the form or amount which this assistance should take.

RECOMMENDATIONS

The amendments proposed by the railways and by the provinces are not recommended. It may be that the time has come for the reconsideration of the appropriateness of the date May 19, 1909, fixed in Section 260 of the Railway Act. There are good reasons why the character of the liability placed upon the railways by that section should have a date of origin some time in the past, perhaps for a period of five or ten years, but the date presently fixed in the statute extends back further than is now appropriate.

15. SASKATCHEWAN SUBSIDIES PROPOSAL

The Province of Saskatchewan submitted to the Commission what its Counsel termed "the main recommendations" of that Province. The proposal was prefaced by three important premises:

1. That an adequate measure of relief from the transportation burden resting on the Prairie Provinces cannot be achieved through the medium of any rate structure capable of implementation;
2. That some further device must be employed if the Prairies are to be compensated in a degree commensurate with the burden they are now forced to support and if that same area is to be protected in the future; and
3. That the Saskatchewan proposal would make the railways "true instruments of national policy".

The proposal consists of two subsidies payable by the Federal Government:

- (1) The Compensation Subsidy—"calculated to compensate for the past", and (2) The Deficit Subsidy—"to guard against impending evils of the future."

It was stated that the compensation subsidy would not really compensate for the past but it is designed to correct certain events of the past which have harmed the prairies, and which are "part and parcel of the transportation problem".

1. *The Compensation Subsidy:* The subsidy is to reimburse the railways for a deduction to be made from all freight bills
 - (a) on all rail freight traffic movements within the boundaries of Manitoba, Saskatchewan and Alberta;

- (b) on all rail freight and lake and rail movements within Canada originating in these provinces to points of destination in other provinces; and
- (c) on all rail and lake and rail freight movements within Canada terminating in these provinces from points of origin in other provinces, excepting however grain and grain products moving at Crownsnest Past rates.

Commenting on the Compensation Subsidy the province puts forth five main reasons in its favour:

- (a) That it is modelled on the Maritime Freight Rates Act and is a close analogy thereto. The positions of the two regions are quite comparable as far as the handicaps of Confederation and the National Policy are concerned; (These handicaps were said to be the customs tariff and the railway policy compelling East-West traffic.)
- (b) That the proposal relates to both inbound and outbound freight in contrast to the Maritime Freight Rates Act which does not apply to inbound freight, because the Province of Saskatchewan believes that consumers as well as producers require relief;
- (c) That the plight of the prairie area is more serious than that of the Maritimes, the long haul to the west is longer, and the west has not the advantage of water transportation that exists in the Maritimes;
- (d) That the impact of the customs tariff is more serious in the case of Saskatchewan; and
- (e) That there is no better way of giving effective relief to the people of the Prairies and especially Saskatchewan than through freight rates.

The province urged that the Commission recommend an Act of Parliament modelled on the Maritime Freight Rates Act, providing for a 20 per cent reduction in freight rates. It frankly stated that the 20 per cent figure was used because this was the figure used in the Maritime Freight Rates Act. It estimated that the annual subsidy payable in respect of the three Prairie Provinces under the proposal would be approximately forty million dollars.

The proposal applied to Manitoba and Alberta. Neither of these provinces associated itself with Saskatchewan in putting it forward.

2. *The Deficit Subsidy:* The Province of Saskatchewan stated:

- (a) That there is an admitted loss on passenger traffic;
- (b) That although not provable, there is a suspected loss on competitive rates and short haul less-than-carload traffic;
- (c) That competition from trucks and aircraft will undoubtedly become more severe; and
- (d) That excessive rates are being charged on long haul traffic to compensate for these losses, and there is every likelihood of an increase in this phenomenon.

The point stressed by the province is that the impact of all these problems focuses eventually on long haul traffic and necessitates the maintenance of higher rates than are justified on this type of traffic, and leads to unduly high charges on traffic in areas such as Saskatchewan where relative monopoly has been maintained by the railways and particularly on traffic least susceptible to competition. The province stated that as pressure for further revenues continues, increases will be applied wherever the monopoly continues.

The province therefore proposed a deficit subsidy by payments out of the Federal treasury to the end that the railways may continue to provide satisfactory services despite inadequate operating revenue.

With this in mind the province suggested an amendment by adding a section to the Railway Act as follows: "Section 325A":

"325A. On any application by the railways for a general increase in freight rates the Board, if it finds that the railways require revenue for their efficient operation, may either:

- (a) order such general increase as it finds is necessary; or
- (b) recommend to the Government of Canada that any additional sum so required be paid by the Government to the railways or to any specified railway, in whole or in part."

Both railways expressed the view that the principle of the Maritime Freight Rates Act should not be extended. The Canadian Pacific took a decided stand against the payment of subsidies generally, and freight subsidies in particular. It was pointed out that the passing of an Act applicable to the Prairies to bring about the Compensation Subsidy would conflict with Section 8 of the Maritime Freight Rates Act which was to give certain statutory advantages to persons and industries in the select territory, and that this would immediately bring about a clamour from the Maritimes for still greater reductions to restore these advantages. It was also argued that if the principle of extending the Act were once adopted it could not be stopped logically at any point.

CONCLUSIONS

No case has been made out for the Compensation Subsidy. It is to be noted that although applicable to both Alberta and Manitoba neither of these provinces advocated it. The basis of the claim really is the "long haul" and a subsidy is not the remedy.

The analogy to the Maritime Freight Rates Act does not exist; the reasons given for the passage of that Act were: (a) Pre-confederation promises; (b) restoration of rates to the level that had been established to give effect to these promises, and (c) the additional mileage of the route taken by the Intercolonial Railway for strategic purposes.

The adoption of the proposal would have the effect of creating still more anomalies.

The Deficit Subsidy proposal does not commend itself to the Commission. In effect the proposed amendment would simply give the Board the power to do two things:

- (a) order an increase in rates if it finds it is necessary (this it already has the power to do), and
- (b) recommend to the Government the payment of a subsidy to the railways of such amount as the Board thinks cannot be raised by freight rates. It is to be pointed out that the Board might come to a conclusion, for example, that in an application for a 25 per cent increase, only 15 per cent could be raised by freight rates and would recommend a subsidy to cover the remaining 10 per cent.

This proposal would create a relationship between the Board and the Government of the country which would be intolerable. The Board's duty is to assess the requirements of the railways and to provide rates that will be just and reasonable to the railways on the one hand and to the shippers and consignees on the other. The Deficit Subsidy proposal envisages the Board saying that it cannot fix just and reasonable rates because the traffic cannot bear them, or because the rates which it would consider just and reasonable to the railways would cause undue hardship to shippers or to regions. The Board should not be put in the invidious position which is envisaged by this proposal. It would both weaken the position of the Board and create pressure upon the Government of the day to prevent increases in rates.

16. THE RAILWAYS SUBSIDIES ACTS and THE CANADA AND GULF TERMINAL RAILWAY COMPANY

A brief was presented by The Canada and Gulf Terminal Railway Company (originally the Matane and Gaspé Railway) requesting the Commission to recommend the repeal of the Railway Subsidies Act of 1903 and its subsequent amendments. An amended submission was made later, however, limiting the request to the repeal of Section 7 of the Act of 1903, as amended by Section 6, Chapter 43 of the Statutes of Canada, 1906, and Section 7, Chapter 63, of 1907-08.

Section 7 of the said Act reads as follows:

"Every company receiving a subsidy under this Act, its successors and assigns, and any person or company controlling or operating the railway or portion of railway subsidized under this Act, shall each year furnish to the Government of Canada transportation for men, supplies, materials and mails over the portion of the lines in respect of which it has received such subsidy, and, whenever required, shall furnish mail cars properly equipped for such mail service; and such transportation and service shall be performed at such rates as are agreed upon between the Minister of the Department of the Government for which such service is being performed, and the company performing it, and, in case of disagreement, then at such rates as are approved by the Governor in Council; *and in or towards payment of such charges the Government of Canada shall be credited by the company with a sum equal to three per cent per annum on the amount of the subsidy received by the company under this Act.*"

(For the sake of brevity reference will be made to the portion in italics of this section as the "Recovery Clause".)

The provisions of Section 7 of the Subsidies Act, 1903, were retained in all succeeding Acts, with the sole exception that the Board of Railway Commissioners was substituted for the Governor in Council as the final rate-fixing body in case of disagreement as to rates between the designated minister of the Crown and the railway company in question. Under the provisions of the Act the company received a subsidy of \$210,053.59 for the establishment of a railway line between Ste. Flavie (now Mont Joli) and Matane, Quebec.

The brief alleged that following the granting of the subsidy and the completion of its line The Canada and Gulf Terminal Railway Company proceeded to carry the mails and to perform other services for the government in accordance with its obligations as fixed by the Act.

The reasons given for the repeal asked for were summarized in the brief as follows:

"To sum up, Section 7 of the Subsidies Act 1903 as amended is prejudicial to the best interests of the generality of Canadian railways subject to it and particularly to those of your Applicant because,

- (1) It is obsolete;
- (2) Certain lines which received equal if not greater benefits are not subject to it;
- (3) It is not being applied to all railway lines to whom its provisions originally extended;
- (4) It is not being applied by all departments of Government;
- (5) The practice of the Post Office Department in arbitrarily and unilaterally fixing rates for the carriage of mails so low as to preclude the railways from earning sums equal to the annual amount due to the Government under the Act, constitutes a hardship for the railways;
- (6) The aggregate amounts collected from all the railway lines still subject to the Act is infinitesimal, taking into consideration the enormous financial operations of the major railways and the Government."

CONCLUSIONS

It appears that Parliament in other cases has provided assistance by grants of subsidies to railway companies without insisting on the inclusion of a recovery clause in the terms of the grant. A report issued by the Department of Transport dated October 18, 1949, entitled "Dominion Railway Subsidies under Legislation, 1899", shows that the following companies were granted subsidies without the three per cent recovery clause:

Temiskaming & Northern Ontario Railway.....	\$2,134,080.00 — 1913
Central Canada Railway Co.....	175,000.00 — 1918
Northern Alberta Railway Co.....	338,382.48 — 1916-19
a total of.....	<u>\$2,647,462.48.</u>

Some of the railways which were subject to the three per cent recovery clause have been taken over by the Canadian National Railways. The Receiver General still recovers from a few of these companies. In most cases, however, the recovery is no longer effected.

According to information made available, the total amount of subsidies paid to all railways under the various Subsidies Acts from 1899 to 1948 was approximately \$51½ million. The list indicates that the last Subsidies Act was in 1925.

Thirty-three railways in all, now forming part of the Canadian National Railways System (and for convenience hereinafter referred to as the "C.N.R. Group") received approximately \$34.90 million for about 3,360 miles.

Thirty-seven railways in all, now forming part of the Canadian Pacific Railway System (hereinafter called the "C.P.R. Group") received approximately \$9.99 million for about 1,800 miles.

Nineteen other railways received approximately \$4.06 million for about 590 miles.

(Three other railways received approximately \$2.64 million for about 740 miles, but the Acts relating to them did not contain the three per cent recovery clause, and are therefore not considered for the purpose of this discussion.)

The various departments of government do not pay for services performed on their behalf by the railway companies subject to the recovery clause until the amount due for services equals the amount due under the said clause. It then becomes a matter of book entries between the department concerned and the Receiver General.

The Auditor General's reports indicate that from the fiscal years 1900-01 to 1947-48 the amounts so paid total approximately \$5.97 million. These sums were, in the earlier years (especially from 1907-1922) received from several departments, namely the Post Office, National Defence, Naval Services, Indian Affairs, Interior, Royal Canadian Mounted Police, etc. In the main they came from the Post Office (\$4.99 million) and National Defence (\$886 thousand).

Since 1921-22, however, the only payments received were from the Post Office and National Defence, and in the case of the latter less than \$28,000 has been paid since 1923, and even of this amount over \$14,000 was paid in the one fiscal year 1945-46.

In the forty-one years that the Post Office has paid these amounts to the Receiver General they have averaged approximately \$122,000 per annum and in the last four years have averaged \$145,000.

The C.N.R. Group in 1948-49 paid, under the recovery clause, \$36,946.88, and the C.P.R. Group in the same year paid \$97,516.15.

Only three other railways (apart from the Northern Alberta Railway, which is jointly owned by the Canadian National and Canadian Pacific railways) paid anything under the recovery clause.

These payments were:

Algoma and Hudson Bay Railway Co.....	\$ 4,043.96
The Canada Gulf and Terminal Railway Co.....	2,494.92
Napierville Junction Rly. Co.....	5,146.83
Total.....	<u>\$11,685.71</u>

Thus railways which received approximately \$35 million paid \$36,900; and railways which received approximately \$10 million paid \$97,500; and railways which received approximately \$4 million paid \$11,600, and of the 33 railways originally in the C.N.R. Group only 3 paid under the recovery clause last year; of the 37 in the C.P.R. Group only 15 paid, and of the 19 in the other group only 3 paid last year.

It is doubtful if the matter comes within the terms of reference, but since it appears that there is discrimination in treatment of the various railways involved, it has been thought well to set out the above facts for the attention of the proper authorities.

17. FEED GRAIN ASSISTANCE

The six eastern provinces and British Columbia obtain feed grains annually from the Prairie Provinces. To aid farmers in procuring these feeds in greater quantities and to keep down costs of production the Government of Canada embarked on a feed assistance policy. Early in 1941 the Government agreed to pay one-half of the regular freight charges on feed grain moved to the eastern provinces, provided the Provincial Governments paid the remainder of the freight costs. Ontario was the only province to take advantage of this arrangement. In the fall of 1941 the Government of Canada provided freight assistance on feed wheat, oats, barley, rye, corn, screenings and millfeeds. In the first instance the Government agreed to pay one-third of the freight charges on feed grain shipped to the East but later paid almost all the freight charges on western grains and millfeeds moved from Fort William and Port Arthur to points in Eastern Canada and from points in Western Canada to British Columbia. This policy of freight payments on the movement of western feed grains has been continued annually ever since, pursuant to a series of thirteen Orders in Council commencing September 25, 1941, and still continuing in the autumn of 1950. In June of 1950 the Minister of Agriculture reported that since the policy was inaugurated in 1941 nearly \$140,000,000 had been paid out in freight assistance and this had involved the movement of 825,000,000 bushels of grain and grain products.

The Maritime Board of Trade said that feed grain assistance encouraged production of livestock in the Maritime Provinces and removed the disadvantages of distance, and requested the Commission to recommend the continuance of the feed grain assistance policy.

The Province of Prince Edward Island stated that disastrous consequences to the livestock, dairy and poultry production on the Island would follow withdrawal of the feed grain assistance policy. They recommended that this policy become a "permanent national policy".

The Canadian Federation of Agriculture recommended that the feed grain assistance policy be incorporated into the freight rate structure as a permanent feature of Canada's national agricultural programme and stated it should be brought about by "Parliamentary statute similar to the Maritime Freight Rates Act".

The Province of New Brunswick stated that the feed grain assistance policy should be continued as it is and that without such assistance the domestic poultry industry could not survive.

The Canadian Automotive Association complained of the fact that the assistance policy does not extend to the costs of transportation by truck from Ontario lake ports inland.

CONCLUSIONS

Although the argument was advanced that this feed grain assistance policy is a method of alleviating the disadvantages of long haul shippers, it does not appear to be a matter of transportation within the terms of reference of P.C. 6033. This policy was adopted during the war by the Government of Canada to encourage and increase the production of feeds and fodder, livestock and poultry. It is a matter of direct subsidy to the industries involved. The Government pays the freight charges and the profit to the railways arises through the increase in the volume of traffic above that which there would be if there were no such subsidy.

Undoubtedly the payment of the large sums involved has encouraged the production of livestock and poultry in British Columbia and in the Central and Maritime provinces. The question whether or not the policy should be continued is not one upon which the Commission is able to make any recommendation.

18. RAILWAY SIDE AND HEAD CLEARANCES

Section 250 of the Railway Act provides as follows:

"Every bridge, tunnel or other erection or structure, over, through or under which any railway passes, shall be so constructed and maintained as to afford, at all times, an open and clear headway of at least seven feet between the top of the highest freight car used on the railway and the lowest beams, members, or portions of that part of such bridge, tunnel, erection or structure, which is directly over the space liable to be traversed by such car in passing thereunder.

"2. The Board may, if necessary, require any existing bridge, tunnel, or other erection or structure to be reconstructed or altered, within such time as it may order, so as to comply with the requirements mentioned in the last preceding subsection; and any such bridge, tunnel, or other erection or structure, when so reconstructed or altered shall thereafter be maintained accordingly.

"3. Except by leave of the Board the space between the rail level and such beams, members or portions of any such structure, constructed after the first day of February, one thousand nine hundred and four, shall in no case be less than twenty-two feet six inches.

"4. If, in any case, it is necessary to raise, reconstruct or alter any bridge, tunnel, erection or structure not owned by the company, the Board, upon application of the company, and upon notice to all parties interested, or without any application, may make such order, allowing or requiring such raising, reconstruction or alteration, and upon such terms and conditions as to the Board shall appear just and proper and in the public interest.

"5. The Board may exempt from the operation of this section any bridge, tunnel, erection or structure, over, through or under which it is satisfied no trains, except such as are equipped with air brakes, are run."

It will be observed that under subsection 1 of this section a railway must maintain a clearance of at least 7 feet between the top of the highest freight car used on the railway and the lowest part of any bridge, tunnel or structure under which such car may pass.

Under subsection 3, the space between rail level and the lowest part of the bridge, tunnel or structure must be at least $22\frac{1}{2}$ feet in the case of any such structure constructed after February 1st, 1904, except by leave of the Board, and under

subsection 5, the Board may exempt structures from the operation of the section if all trains operating over, through or under such structures are equipped with air brakes.

The Railway Transportation Brotherhood stated (1) that the head clearance is inadequate and (2) that the Board has been too liberal in granting exemptions. They stated that head clearances should be specified simply as 7 feet above the highest car in service and the Board's power to grant exemptions should be restricted.

The same organization said that Section 250 should be amended to provide for statutory side clearances applicable to all lines of railway regardless of when they were built.

Section 287 of the Railway Act provides *inter alia* as follows:

"287. The Board may make orders and regulations (g) with respect to the rolling stock, apparatus, cattleguards, appliances, signals, methods, devices, structures and works, including light, heat and power lines or wires, to be used upon the railway, so as to provide means for the due protection of property, the employees of the company, and the public and all persons travelling on His Majesty's service;
(1) generally providing for the protection of property, and the protection, safety, accommodation and comfort of the public, and of the employees of the company, in the running and operating of trains and the speed thereof, or the use of engines, by the company on or in connection with the railway."

The amendments proposed by the Brotherhood were as follows:

"That Section 250 of the Railway Act be amended to provide:

1. A safe side clearance appropriate to the use of equipment of present and anticipated dimensions, in addition to vertical clearance now prescribed by subsection (1).
2. That subsections (3) and (5) be amended to conform with subsection (1).
3. Requirements that any new construction or rearrangement of tracks or alteration of buildings, conform with the clearance standards prescribed by subsection (1) as proposed to be amended.
4. Requirement that there be undertaken the early rearrangement of parallel tracks, and such practicable alteration of structures, with special references to general switching and terminal yards of railways, that will provide safe clearances.
5. That men be not required to ride the tops or sides of rolling stock in areas adjacent to such restricted clearance as may be found impracticable of correction."

CONCLUSIONS

It seems that under Section 250, subsection 1, the railways must now provide for a 7-foot head clearance; the other subsections of that section appear to contain nothing which modifies or authorizes any departure from that 7-foot requirement; nor does the Board appear to be empowered by anything contained in subsections (3) or (5) to authorize such departure.

The discretion granted to the Board covering structures constructed prior to February 1, 1904, should not be taken away.

As to side clearances, it appears to be impractical to lay down an inflexible rule. The evidence shows that in some cases there is no room to spread the tracks farther apart and that flexibility in this matter must be permitted.

Paragraph 7 of General Order 236 of the Board deals with the matter of side clearance. Reference may also be made to General Order 345 which makes provision for safe clearance in the movements of trainmen and yardmen in the performance of their duties. If this does not provide sufficient protection, an application can be made to the Board and after hearing the Board may make such Order as is deemed sufficient. This is a much better and more practical

method of dealing with the matter of side clearances than by legislative amendment, as it enables the Board to deal with each case as it arises and retains the obviously necessary flexibility.

19. SAFETY AMENDMENTS PROPOSED

The Railway Transportation Brotherhood proposed that Section 267 of the Railway Act be amended to provide for two signboards instead of one at each crossing, and that they be "reflectorized signboards".

The present section reads as follows:

"Signboards at every highway crossed at rail level by any railway, shall be erected and maintained at each crossing, and shall have the words *Railway Crossing* painted on each side thereof in letters at least six inches in length."

The amendment proposed by the Brotherhood would require that "prominently reflectorized signboards shall be placed on both sides of the crossing".

It seems that this would cause a great deal of additional expense without any appreciable added protection to the public.

20. EMPLOYEES' COMPENSATION IN ABANDONMENT CASES

Section 178 of the Railway Act provides for the making of deviations and changes in railway lines by a Railway Company with the approval of the Board.

The Railway Transportation Brotherhood proposed that Section 179 of the Act, which deals further with the same subject, be amended.

Section 179 now provides as follows:

"The company shall not, at any time, make any change, alteration or deviation in the railway, or any portion thereof, until the provisions of the last preceding section are fully complied with, nor remove, close, or abandon any station, or divisional point nor create a new divisional point which would involve the removal of employees, without leave of the Board; and where any such change is made the company shall compensate its employees as the Board deems proper for any financial loss caused to them by change of residence necessitated thereby."

The proposed amendment would add a new sub-section as follows:

"Whenever the company partially abandons or partially closes any station or divisional point involving the removal of employees resident at such station or divisional point, the Board shall have power to conduct a hearing upon request of the representative or representatives of such employees and to order the company to compensate the employees as the Board 'deems proper for any financial loss caused to them by change of residence necessitated thereby'."

The effect of the present section 179 is to prevent the railway from removing, closing or abandoning any station or divisional point involving removal of any employees without leave of the Board and without proper compensation to the employees.

The amendment proposed by the Brotherhood provides for cases of so-called "partial" abandonments.

Under the proposal it is easy to foresee that many cases of reductions in staff would give rise to controversies as to whether or not they constituted "partial" abandonments. It would be unwise to recommend legislation framed in language of so loose and indefinite a character.

No case of alleged hardship in recent years was brought to the notice of the Commission. The only case referred to took place in 1931 at Big Valley,

Alberta, when the terminal of the Canadian National Railways was allegedly abandoned. To bring out the facts of this case and the treatment received, it will be well to quote from the judgment of the Board, as follows:

"From the above it is clear that the Canadian National Railways have not 'abandoned' Big Valley, in the literal sense of that word. The applicants, however, contend that the retention of these men at Big Valley is mere camouflage and intended solely to escape the effect of Section 179.

"The real point then to be determined in the case is, whether or not the applicants have established their contention in this respect, for I am satisfied that, if such were the case, we would be entitled to hold that within the meaning of the section the terminal had been abandoned."

The spokesman of the Brotherhood said that the object of the proposed amendment is to protect employees against sharp practices by the railways aimed at avoiding responsibility by making actual abandonments appear as being only ordinary operational changes. The Statute in its present form seems to provide adequate protection in such cases.

No amendment is recommended to Section 179 of the Railway Act.

21. NATIONAL HARBOURS BOARD—PORT ADVISORY COUNCILS

Submissions have been made from three sources requesting that the Commission recommend the appointment of Local Advisory Councils in connection with National Harbours.

The submission of the Transportation Commission of the Maritime Board of Trade stated:

"It can be anticipated that in this postwar period intensified interport competition will exert a tremendous pull in the flow of all available export and import traffic. The welfare of Saint John and Halifax has considerable at stake in the quantum of freight handled through those ports, yet, solicitation and promotional plans, apart from those of the railways (which) service the ports and steamship agents or owners, are wholly in the hands of the National Harbours Board. The existing arrangements and centralized control are not conducive to effective port promotion.

This commission considers it in the best interest of the ports of Halifax and Saint John that the Federal Government appoint local port advisory committees from steamship interests, labour and the municipal authorities for the purpose of formulating plans in co-operation with port management directed to meeting future port requirements, advising management on port matters of mutual interest, and undertaking promotional work within the bounds of a reasonable budget for that purpose."

The submission of the City of Quebec and of the Chamber of Commerce of the city of Quebec may be summarized as follows: that the present administration of the Port of Quebec is unsatisfactory and that the Sir Alexander Gibb Report recommendation with respect to the appointment of local advisory councils be adopted.

The submission of the Halifax Board of Trade stated that the action of the Canadian Pacific Steamships Limited in transferring their steamships from Halifax to Saint John "brings to a climax a situation which demands an immediate review of the position of the Port of Halifax as to its facilities, its services and the steps to be taken which will lead to its future development and prosperity". The submission also stated that the Port is served by only one railroad, namely the Canadian National and that it is unique in this regard. It urged the appointment of a local advisory council as recommended in the Report of Sir Alexander Gibb in 1932.

CONSIDERATION OF THE FACTS

1. *The Port of Halifax*

To deal first with the case of Halifax: The spokesmen for the city say that "the first step in improving conditions here is the appointment of a local advisory port council for this port as recommended in the Report of Sir Alexander Gibb in 1932". This Report says as follows:

"Considerable latitude should be allowed to the port managers so long as their activities are directed to carrying out the policy laid down by the central authority. It is essential to avoid emasculating the local administration, since no centralized control can replace an efficient and active local administration, of the special knowledge and initiative of the local business community, both of which are vital to a port's prosperity.

For this latter reason I strongly advocate a local advisory council. There are very many aspects of port working which such a council can properly care for, such as the representation of the interests of private wharf owners, of local merchants and distributors, of local consignees and exporters, of the labour view, and of the attitude of Boards of Trade, Chambers of Commerce, Corn Exchanges and other such trade organizations, in addition to shipping.

It serves very usefully to identify the community with the port; and to secure the support and interest of local Members of Parliament, the City Council, or provincial government in schemes, and so anticipate and meet criticisms from any such quarters, or action that might be prejudicial to the port.

It is invaluable in exploring the possibilities of local markets, in carrying out advertisement and propaganda and in co-operation with interests likely to promote industrial developments. Finally, a local council provides a useful check on the tendency of more or less permanent officials to become stereotyped or arbitrary.

The port manager would be ex officio chairman of the council, which would meet regularly and be consulted on all such matters as proposed developments, alterations in rates, important changes in operation. The members of the council should have the right of initiating discussions on matters of policy affecting the port, on any complaints raised by users of the port, and on questions of rates, charges, etc.; but not on any purely executive matters and they would have no executive duties or powers.

The advisory council's proceedings and recommendations would be submitted to the central authority; and they should have the right of direct access to the central authority, but not to any other department of government."

Following upon Sir Alexander Gibb's Report Parliament in 1936 passed the National Harbours Board Act, 1936. This Act set up a central authority as the Report recommended, to be called the "National Harbours Board" which is now functioning. The statute does not contain provision for such an advisory council at each harbour as was recommended in the Report. The question of establishing these councils was discussed in Parliament at the time and the Minister of Marine made the following statement:

"There is nothing in this bill which prevents the establishment of local advisory councils if it should be found that they are necessary. But it was considered that the port manager would give all the necessary local contact, and that there would not be need for local advisory councils. But if the need becomes apparent . . . that local councils will be established, which may be carried out under the terms of the bill."

It is to be assumed, therefore, that the Government of Canada has in mind the possibility of appointing local councils whenever in the course of the administration of the National Harbours Board Act it seems advisable to do so. It does not appear proper to conclude, however, that the setting up of such a Board in Halifax would go to any considerable length in meeting what are said to be the requirements of that port. Sir Alexander Gibb's Report in this particular indicates that the local council to which the Report refers is one which would work with the port manager and the central authority (the National Harbours Board)

exclusively. The recommendation states that the port manager is to be the chairman of the council and the council is to have the right of direct access to the central authority only. The proposal submitted on behalf of Halifax goes further and asks that the local advisory council have access to the Minister, and that moreover its members be entitled to travel to Ottawa to see the Minister whenever they judge it convenient to do so, at the expense of the Government. It seems that an organization of this character would become a body operating outside of the central authority and its existence might not be altogether compatible with the proper functioning of the central authority. Moreover, the submission goes on to say "it is essential that the services of a properly qualified individual be engaged whose duty it will be to travel internationally selling the advantages of the Port of Halifax and securing traffic for it". It seems to be implied that the remuneration and expenses of the person in question are to be paid by the Government of Canada. The fact, of course, is, as the submission on behalf of Halifax points out, that the port is not doing the business which those interested in it believe it should do and the Government is called upon to remedy this state of affairs by adopting the measure outlined.

It is not easy to see how the Government could be expected to incur the expenses and set up the port advisory machinery which is suggested for Halifax without being called upon to do the same thing for the other National Harbours. There is no doubt that some of these at least would insist upon similar treatment being extended to them. If all these demands were acceded to the Government would find itself with a number of appointees travelling in foreign countries soliciting business for individual Canadian Ports competing very often among themselves.

What the Port of Halifax needs is, of course, more traffic from and to the port. In so far as export traffic is concerned, it was alleged that the Canadian National Railways diverts a considerable part of its traffic to Saint John instead of Halifax. But it must be remembered that the routing of all railway traffic is fixed by the shipper and not by the railway. The shipper selects the port in which he believes his traffic will be handled the most expeditiously. Among other things this means that the shipper must have a reasonable assurance of his freight being transferred aboard ship with the least possible loss of time. These desiderata can only be brought about by the Port of Halifax being served by steamships and by the other facilities required for expeditious handling of traffic. These requirements are, of course, matters which the local advisory councils recommended to be set up by the Sir Alexander Gibb Report would not be qualified to bring about.

2. The Port of Quebec

The submission made on behalf of the Port of Quebec also asks that a local advisory council be established at the Port in accordance with the recommendation of the aforementioned Report.

Here again it appears that the disadvantage from which the Port of Quebec is suffering is of the same character as that complained of in the case of Halifax; it is the lack of shipping activity in the Port. If anything is to be done to remedy this state of affairs, it must be said, as has been said in the case of Halifax, that the setting up of such a local council as the Sir Alexander Gibb Report describes would not bring about the state of affairs which the Quebec authorities are anxious to secure.

CONCLUSIONS

In view of the character of the needs which appear to exist in regard to the above mentioned ports, it does not appear advisable to recommend to the Government the appointment of the local councils proposed by the Sir Alexander Gibb Report.

In the first place these councils would not meet the requirements of the situation. If they were appointed in one case, similar appointments would have to be made in all ports. In the second place the result of these appointments would probably be disappointing from the point of view of local interests because the Government itself and Government appointees could do nothing to favour any one Canadian Port to the detriment of another or of others.

22. CHIGNECTO CANAL

The Province of New Brunswick stated that the Chignecto Canal should be completed and that it should operate as a toll-free canal. It was stated in the province's brief that it would provide an alternative means of transportation to overcome the difficulties created by long haul railway traffic and that it would develop industry within the province.

The Province of Prince Edward Island also endorsed the proposal that the Chignecto Canal should be completed and similar endorsements were received from the Prince Edward Island Boards of Trade and the Maritime Board of Trade.

The Transportation Commission of the Maritime Board of Trade submitted that "the canal project should again be investigated in the light of changed conditions and circumstances to determine its practicability".

On June 22, 1950, the Chignecto Canal Committee presented a brief to the members of the Federal Government and later submitted the same brief to this Commission. The conclusions set out in this brief are as follows:

"In conclusion we submit the Chignecto Canal should be constructed because:

1. It was understood at the pre-Confederation Conference at Quebec in 1864, and at London in 1866, that the canal would be constructed. The undertaking was given by the delegates of Canada to those representing Nova Scotia and New Brunswick as an inducement for the latter to work for the entry of their province into Confederation.
2. There have been many surveys of the Chignecto Isthmus since 1822 and with only minor differences of technical opinion all surveyors agree on the feasibility of the canal from an engineering standpoint.
3. The four Atlantic provinces—two of which are islands—have transportation problems dual in character. Carriage by sea of their interprovincial and other external trade must be considered as well as transportation by rail. It is vitally important to their economy to shorten the sea routes between trading points and eliminate the circuitous ones.
4. The canal will revive many native industries which flourished decades ago but which were unable to survive the pressure of ever-increasing rail charges. New industries will spring up in the Chignecto area, on both sides of the canal; existing communities will be enlarged and the economy of the surrounding countryside changed for the better. New traffic created will be shared substantially by the railways.
5. The canal will reduce by 300 to 600 miles the present sea distances from Nova Scotia and New Brunswick ports on the Bay of Fundy to the St. Lawrence and the Great Lakes, and consequently lessen transportation costs of commodities moving between these areas. It will facilitate the establishment of new outlets for Maritime produce.
6. It will shorten the distance from Prince Edward Island ports to the substantial markets for the Island's vegetables and fisheries products in the eastern United States, thus cutting transportation charges.
7. Speedy and direct communication by sea will be established between ports in northern New Brunswick and the Bay of Fundy ports which are now separated by the barrier of the 18-mile wide Chignecto Isthmus."

The Committee asked "not that another Royal Commission be appointed to provoke further controversy and delay but, pursuant to the recommendations of the Surveyer Commission, to renew the proposal, in the light of conditions

now existing, to ask that you, with all despatch, have plans and specifications prepared for a modern deep draught canal and commence construction at the earliest possible date”.

PREVIOUS COMMISSIONS

As pointed out in the brief of the Chignecto Canal Committee, the proposal is not a new one. There have been many reports, surveys and commissions. It will be, however, sufficient in regard to the past to consider the report of the most recent commission, namely that of the Chignecto Canal Commission, dated November 9, 1933, under the Chairmanship of Dr. Arthur Surveyer. Its conclusions may be summarized as follows:

- (a) Physically the project is feasible and a canal with locks would be required.
- (b) The cheapest and most satisfactory route available would be that known as the Missiquash route.
- (c) The construction of the canal would not result in any great stimulation of water-borne commerce, but it would result rather in the redistribution of certain present traffic movements in the area immediately tributary to the canal.
- (d) There is a decided difference of opinion as to the value of the project among shipping men, the coastal trade hailing the proposed canal as a boon and those interested in the through business and established connections preferring the present line of communication.
- (e) If viewed merely as a stimulus to present water transport, as affording direct connection between the waters of the Gulf of St. Lawrence and those of the Bay of Fundy, the amount of direct effect and the interests to be served do not justify the expenditure involved.
- (f) As a through maritime highway it would not likely be attractive to shipping in view of the preferable navigation conditions in more open waters. In that connection too much weight ought not to be ascribed to distance.
- (g) A canal at Chignecto would not likely have any bearing whatever on Canada-West Indies trade as it offers no advantage in either time or mileage.

The Commission stated that it “is strongly of the opinion that the proposal to construct a canal at Chignecto offers no national or local advantages at all commensurate with the estimated outlay”.

ESTIMATES OF COST

At the time of the Surveyer Commission estimates of cost were made for two projects: Project Number Three, so-called, being a canal 25 feet in depth with a 125-foot width at the bottom and locks 500 feet by 60 feet. Project Number Seven, so-called, being for a canal 18 feet in depth with a 70-foot width at the bottom and locks 300 feet by 48 feet. The estimated costs for Project Number Three were \$39,000,000, and for Project Number Seven, \$23,000,000. Project Number Three would accommodate freight vessels of the type engaged in the Bay of Fundy gypsum trade in 1933. Project Number Seven would provide facilities for navigation comparable to those provided at the Saint Peter's Canal in Cape Breton.

In December 1949 the engineer who made the estimates for the Surveyer Commission brought these estimates up to date taking into account increased costs, and he estimated the cost of Project Number Three would exceed

\$90,000,000 and Project Number Seven, \$54,000,000. The estimated annual charges for Project Number Three were in excess of \$6 $\frac{1}{3}$ millions and for Project Number Seven in excess of \$4 millions.

NEW REASONS ADVANCED FOR CONSTRUCTION OF THE CANAL

In the last few years two new reasons have been advanced for the construction of the canal: (1) as a route to cheapen the cost of the transportation of iron ore from Seven Islands in the Gulf of St. Lawrence to Baltimore, and (2) as a stimulant to trade between Newfoundland and the United States Atlantic ports. It has been pointed out that the actual saving in distance between Seven Islands and Baltimore that would result from the use of the canal is only 140 miles and that when allowance is made for the delays necessitated by the navigation of 30 miles of restricted channel and passage through two locks, the real saving amounts to only 85 miles. Furthermore, the new ore boats used in the trade are of such length, width and draft that a canal to permit the passage of such vessels would have to be at least 36 feet deep with locks 700 feet long and 85 feet wide. The Commission is advised that it is impossible even to approximate what the cost would be of a canal of the dimensions necessary to accommodate these large ore carriers and it is also impossible to imagine that the use of these carriers would be abandoned in favour of smaller ships in order to effect a saving of 85 miles in a total sailing distance of 1,300 miles.

With respect to the Newfoundland trade the actual distance that would be saved by the use of the canal route between St. John's, Newfoundland, and Saint John, N.B., would be 94 miles. When allowance is made for delays due to canal navigation and lockages, the saving in sailing time would be equivalent to 36 miles.

The distance to Boston from St. John's via the canal would be 100 miles greater than via the direct route, and to New York 140 miles greater. The saving in distance between any port on the west coast of Newfoundland to Saint John, N.B., by use of the canal would be 200 miles, but even from these ports no saving would be effected on a voyage to Boston or any point further south.

The economic study of the project made by the Surveyer Commission in 1931 showed that the unit savings in transportation costs were such that to balance the annual charges resulting from the construction of the project the traffic required to make the canal a paying proposition "would have to exceed the maximum annual capacity of the canal".

The estimated annual charges at the time of the Surveyer Commission were approximately \$2 $\frac{3}{4}$ million for Project Number Three and \$1.8 million for Project Number Seven. It will be observed that on the basis of 1949 estimates the annual charges have increased nearly threefold.

CONCLUSIONS

It is self-evident that conditions have changed vastly since the reports of the various commissions were made prior to 1931. Traffic now moves in this area by motor truck which was not a factor at the time of the previous reports. Substantially the same conditions pertain now as in 1931 (except that there is now much more truck traffic than at that time) when the Surveyer Commission said that there would be "rather a redistribution of certain present movements in the area immediately tributary to the canal".

There is certainly not sufficient evidence to justify the Commission in recommending a capital expenditure of at least \$100,000,000 with annual charges in the neighbourhood of \$6 $\frac{1}{2}$ million, more especially as the canal so constructed might be too small for certain types of traffic. The proposed Chignecto Canal

cannot be compared with canals such as those which exist in the Great Lakes in Canada where there is no alternative form of water transportation and where the traffic is of great volume.

RECOMMENDATION

For the reasons which appear above the Commission cannot recommend the construction of the Chignecto Canal.

23. OPERATION OF PRINCE EDWARD ISLAND CAR FERRY, BORDEN-TORMENTINE

Under the terms of Confederation upon which the Province was admitted to Canada in 1873 are the following:

"Efficient steam service for the conveyance of mails and passengers to be established and maintained between the Island and the mainland of the Dominion, winter and summer, thus placing the Island in continuous communication with the Inter-colonial Railway and the railway system of the Dominion."

One of the main subjects placed before the Commission by the Province of Prince Edward Island had to do with the car ferry service between Borden and Tormentine which forms the sole connecting rail link with the railway system of Canada. The car ferries operated on the service are owned by the Government of Canada but the management and operation are entrusted to the Canadian National Railways.

The M. V. "Abegweit" is an icebreaker well equipped to handle freight, passengers, automobiles and trucks. An older car ferry, the S.S. "Prince Edward Island" built in 1917, is used to replace the "Abegweit" when the latter is undergoing repairs, and to provide a second service during the congested period of "Old Home Week", which is one of the major annual events on the island.

The complaints made were:

That one car ferry cannot handle the traffic adequately.

That the Canadian National Railways treats the management and operation of the car ferry "as if it were part of the railway operations".

This was alleged to have a detrimental effect on traffic to and from the island as hereinafter indicated.

The solutions recommended by the Government of Prince Edward Island were:

That an additional car ferry capable of handling freight, automobiles and trucks is imperatively required;

That the operation of the car ferry service should be transferred from the Canadian National Railways to either the Department of Transport or to an independent ferry commission.

As to the need for a second car ferry the Province submitted extensive evidence showing the increase in the volume of traffic as follows:

Freight Traffic	1918 —	10,125	carloads
" "	1921 —	15,702	"
" "	1925 —	21,592	"
" "	1935 —	24,657	"
" "	1947 —	49,312	"
" "	1948 —	52,620	"
Passenger Traffic	1941 —	157,316	passengers
" "	1948 —	185,240	"
Automobiles	1926 —	4,296	"
"	1941 —	25,093	"
"	1948 —	45,698	"
Trucking	1944 —	535	trucks
"	1948 —	4,240	"

There were numerous complaints of delays and particularly of tourists having to wait to get to and from the island because of the inadequacy of the service provided by one ferry.

The Province referred to the findings of the Duncan Commission that the ferry service was unsatisfactory in 1925, and the admission by the railway administration that there was need for supplemental provision being made in the form either of a second ferry boat or of a special freight boat. The recommendation was implemented by the S.S. "Charlottetown" which when lost was replaced by the present M.V. "Abegweit".

The Sirois Commission in 1938 stated that a reasonable ferry service had been provided and reasonable improvements made from time to time. But the provincial government points out that conditions have changed greatly since the Duncan Commission sat in 1925 and the Sirois Commission in 1938. Freight traffic has doubled, passenger traffic has greatly increased and automobile and truck traffic has multiplied many times.

The facts indicate that the representations made by the Province are undoubtedly well founded.

In the final argument Counsel for the Province stated that the position had improved very greatly since the regional hearings of the Commission in Charlottetown. Examples of the improvement were: (1) the "exorbitant rate" charged to trucks had been reduced from \$30 per truck to \$3 one way and \$4 return; (2) the second ferry S.S. "Prince Edward Island" had been put into operation for the summer months to operate from June 15 to September 15, but the Minister of Transport had indicated that if it did not pay its way this might be the end of the operation of the second car ferry during the summer months.

The position taken by the Province is that the operation of the second car ferry during the summer months should be carried on regardless of whether or not it is a "paying proposition"; that it is not a question of commercial operation, but rather one of "service in the national interest".

The Province's contentions were summed up by Counsel as follows:

1. That it is the obligation of the Federal Government to provide ferry service to meet the increased requirements of traffic, and that the recent action taken in 1950 by the Government in providing for the second ferry for the summer months is a partial recognition of the obligation;
2. That the Province by reason of its geographic disadvantages suffers in the way of transportation, and that therefore the Commission should recommend to the Federal Government the provision of a second ferry during the summer months, regardless of whether or not it pays its cost of operation, and that this be made a "permanent policy".

The Province refers to the recommendation of the Duncan Commission that this service "should not be run as part of the railway operations, but should be run by the railway administration under separate account for the department". The Duncan Commission said: "We feel that, by reason of its association with railway accounts, this service does not get the attention it deserves."

CONCLUSIONS

1. The evidence shows clearly: (a) that the ferry service has been too closely tied to railway train schedules; (b) that the ferry service is regarded by the railway administration as a part of the railway service rather than as a transportation service to the people of the Province; and (c) that the attitude of the railway with respect to trucks and buses including the access of these latter to the ferry approaches and the excessive charges made until recently for trucks, is an indication of unsatisfactory conditions.

(*Note:* Since the above paragraph was written, the Commission has received information, of date the 23rd January, 1951, to the effect that the Canadian National Railways has now agreed to remove the pierage charges heretofore imposed upon buses approaching the ferry.)

2. The dependence of the island on the ferry service is such that adequate ferry service must be established consonant with the reasonable requirements from time to time of the traffic to and from the Island to the mainland.

3. This is especially true because of the importance to the Island of tourist traffic which is bound to be hindered if adequate ferry service is not provided in the summer months.

4. The Province has established a clear case of the inadequacy of one ferry during the summer months and an additional ferry capable of transporting automobiles should be operated during the period June 15 to September 15 each year. The guiding principle should not be whether the operation of the second ferry is financially profitable but rather whether the second ferry is reasonably required to meet the demands of traffic. Details of schedules, length of the period of operation and tie-in with train schedules can be worked out after operational experience.

5. There appears to be no doubt that the operation of the Borden-Tormentine ferry service has not been satisfactory in the past.

RECOMMENDATIONS

1. The Commission recommends that adequate ferry service be provided between Borden and Tormentine consonant with reasonable traffic requirements.

2. This will require the operation during the summer months of an additional ferry capable of carrying automobiles.

3. The Federal Government should examine the traffic situation frequently to determine the adequacy of the ferry service.

24. WOOD ISLAND-CARIBOU FERRY SERVICE

AND

PROPOSED WEST POINT-BUCTOUCHE FERRY SERVICE

During the hearings in Charlottetown two briefs were presented dealing with ferry services between the Island and the mainland (other than the Borden-Tormentine route).

The first brief was that of Northumberland Ferries Limited which operates a ferry service between Prince Edward Island and Nova Scotia with termini at Wood Island and Caribou. The complaint is that the present ferry must soon be replaced, that the company is not in a position to finance the new boat, and that additional ferry service is required on this route since at times long lines of traffic to and from the Island are held up. The Company also stated that the harbours at the terminal points needed dredging, that additional aids to navigation were required, and that additional docking facilities and equipment permitting operation of the service at night as a temporary solution to the problem of waiting traffic should be provided. The Company receives subsidies through the Canadian Maritime Commission.

The second brief was that of West Point Ferries Limited, which was incorporated for the purpose of operating a ferry service between Prince Edward Island and New Brunswick with termini at West Point and Buctouche. The Company stated that the Borden-Tormentine route did not adequately serve the western end of the Island, that the Wood Island-Caribou ferry service was of no value to the western section of the Island, and that a ferry service between

West Point and Buctouche would put the west end of the Island in the same position as the east end, give access to wider markets and assist greatly the tourist trade on the Island. The Company made an application to the Canadian Maritime Commission for a subsidy to enable it to proceed with the project but the application was denied. The Company asked the Commission to recommend that a subsidy be granted and stated that the deciding factor should be whether the service is required, and not the cost involved.

The Government of Prince Edward Island in its brief supports the West Point ferry project, and the Boards of Trade of Prince Edward Island endorsed it. The Boards of Trade also stated that the Wood Island service should have larger boats, more frequent, earlier and later crossings, and that there should be pier and harbour improvements at the termini of the Wood Island-Caribou route.

CONCLUSIONS

In each of these cases the main question involved is one of financial assistance. There is a body set up to deal with such matters — namely the Canadian Maritime Commission. There is no doubt that if the public necessity and convenience warrant it that body will deal with the respective applications on the merits of each case with due regard to the cost involved.

No specific recommendation can be made in the case either of the present service being operated between Wood Island and Caribou, or in the case of the proposed service between West Point and Buctouche. Projects of this kind should be considered by the Government of Canada in the light of the great importance of the tourist trade to Prince Edward Island as well as the amount of expenditure involved in the case of each project.

The need for additional facilities at the terminal points is a matter for the consideration of technical experts in the Department of Transport.

25. PROBLEMS OF THE PORT OF LOUISBURG, N.S.

The Louisburg Board of Trade claimed that the Port of Louisburg on the Eastern coast of Cape Breton in Nova Scotia is placed at a disadvantage due to the present rate structure, and the geographic position of the Port in relation to the railways. It was stated that while Louisburg is the only winter port in Cape Breton, its progress has been retarded because of the way in which the railway lines have been built in that territory. It was pointed out that the Intercolonial Railway had built its lines by the northerly route to Sydney, N.S.; that while a survey had been made to build the railway around the Eastern coast it had only been constructed as far as St. Peters, N.S., and that Louisburg is now reached by rail via the Intercolonial line of the Canadian National system to Sydney and thence via the Sydney and Louisburg Railway with added costs. It was also pointed out in connection with shipments to or from Newfoundland that Louisburg is not an alternate port when North Sydney is closed, (as Halifax and Saint John are), because the additional rates of the Sydney and Louisburg Railway prevent the use of Louisburg.

The railway known as the Sydney and Louisburg Railway is not a part of the Canadian National system; it is owned by the Dominion Steel and Coal Company and charges separate rates which are added to those of the Canadian National on through hauls. This railway is subject to the Railway Act, the Maritime Freight Rates Act and is under the jurisdiction of the Board of Transport Commissioners.

The Louisburg Board of Trade suggested that "the area along the Eastern coast of Cape Breton from Little Bras D'Or to Louisburg should be made one zone with one freight rate for incoming and outgoing traffic in this area".

In justification of this suggestion it was further stated that "this zoning system would enable fishermen moving along the coast in this area to load their catch at the most suitable point, and shipping coming on this coast could use the Port of Louisburg without added costs, delays and damage due to ice conditions" and, among other things, "it becomes all the more important that the Port of Louisburg be considered in view of the fact that it is open all the year round and is the only port on this Island where the Newfoundland traffic can be handled when ice conditions make the ports of Sydney and North Sydney inaccessible to the Canadian National Railways ferry service."

CONCLUSIONS

In suggesting one rate zone for the eastern shore of Cape Breton, the Board of Trade overlooks the private ownership of the Sydney and Louisburg Railway. To follow the suggested remedy of one rate group for this territory would mean that Louisburg would have to be included in the Sydney rate group and the Canadian National would have to pay to the Dominion Steel and Coal Company (the actual owner of the railway) the entire revenue of the line. Thus the Canadian National would have to absorb the total cost of making one rate group in this territory. There are about twenty other small railways in Canada, and if the principle suggested by the Louisburg Board of Trade were conceded, it would eventually mean that the Canadian National, or in some cases the Canadian Pacific, would be compelled to absorb the whole cost of reducing the rates of other railways to common rate groups with the two major railways. No such procedure can be recommended. This report deals elsewhere with the question of joint interline rates. It has been pointed out above that the Board of Transport Commissioners has jurisdiction over the Sydney and Louisburg Railway and its rates.

26. PROPOSED RELOCATION OF MONCTON FREIGHT YARDS

In a brief submitted by the Town Planning Commission for the Metropolitan Area of Greater Moncton it was stated that the situation of the railway within the centre of the city constituted a source of smoke, dirt and noise and that the main line of the railway, by virtue of intersections with streets of the city, created ten dangerous level grade crossings (eight in the heart of the city), eleven existing dead-end streets, causing detour of normal traffic flow and restricting the city's growth; two ugly railway-over-street subways and two obsolete street-over-railway bridges.

The Town Planning Commission outlined a plan which they said would gradually remove the existing yard trackage to a new location, do away with the level crossings and dead-end streets, eliminate the smoke, dirt and noise, remove the bridges and eliminate the subways.

It was frankly admitted by the Chairman of the Town Planning Commission that it was a "sweeping plan" but it was claimed that there would be advantages not only to the city but to the railway and that it was really a matter for negotiation with the railway rather than the passing of legislation to remedy the matter. The Town Planning Commission stated that they had neither the funds, the staff nor the resources to investigate the plan and that it required both an economic study and a capital cost study. The witness pointed out that it was a matter involving much more than the Board of Transport Commissioners is customarily concerned with, and said:

"They are concerned generally with the elimination of one or two level crossings and sometimes possibly three in a certain locality, but this is a sweeping plan that involves the elimination of ten at one fell swoop not by grade separation but by moving the main line of the railway."

The Town Planning Commission recommended that the Commission's Report include specific reference to this problem coupled with a recommendation that an official study be undertaken by a "Joint Engineering Investigating Committee" composed of four engineers appointed by the city, the railway, the Board of Transport Commissioners and the Department of Transport, and also that consideration be given to widening the powers of the Board under the Railway Act so that they may be "empowered to investigate or to instigate investigations into matters of this kind and make recommendations for corrective measures to promote safety and convenience and better living conditions in the areas affected".

CONCLUSIONS

It appears that, if a proper case can be made out by any municipality in a matter of this kind, and it can be shown that the plan proposed would be advantageous to both the community and the railway, the subject should become one of negotiation between the two parties involved rather than a matter of legislation.

As to the proposal for a joint engineering investigating committee, there is no doubt that the assistance of engineers would necessarily be a part of any negotiations to be carried on.

27. THE SAINT JOHN GATEWAY

Before the Intercolonial Railway became part of the Canadian National Railway System shippers had the privilege of routing traffic from originating points on the Intercolonial in the Maritime Provinces to Canadian destinations on the Canadian Pacific Railway via Saint John, New Brunswick, and Ste. Rosalie, Quebec. The Maritime Board of Trade stated that this privilege gave persons and industries located in the Maritimes an opportunity to have their traffic follow alternative routings. In 1925, after the Intercolonial became a part of the Canadian National Railway System, the Canadian National Railways cancelled the alternative routings provided in certain tariffs. This virtually cut out the Saint John Gateway on westbound traffic as the Canadian National hauled over its own lines substantially all the freight originating on the lines of its system in the Maritime Provinces destined to points competitive with the Canadian Pacific. In making this change the Canadian National Railways merely followed the practice of other railways on the continent of hauling traffic originating on its own lines as far as possible before handing it over to another carrier.

However, the Board, upon complaint of certain Maritime interests, suspended the tariffs of the Canadian National which had cancelled alternative routings via Saint John and Ste. Rosalie. (1926, 32 C.R.C. 37.)

Upon the enactment of the Maritime Freight Rates Act in 1927, which required the substitution of new tariffs on July 1st of that year, the Canadian National again filed tariffs omitting alternative routings to points competitive with the Canadian Pacific.

This action on the part of the Canadian National was followed by an application by the Maritime interests to the Board, the substantial objective of which was to restore the alternative routing privilege as it had existed before 1925. The Board ordered accordingly.¹ The Supreme Court held on appeal² that the Board had no jurisdiction under the Act to order rate reductions on freight routed to points west of Montreal from points on the Canadian National Railways (on which reductions are compulsory) via Saint John and thence over the Cana-

¹ C.N.R. v. Nova Scotia 1927, 34 C.R.C. 207.

² C.N.R. v. Nova Scotia 1928, S.C.R. 106.

dian Pacific Railway (on which deductions are only optional), but may order reductions on freight routed via Ste. Rosalie which is a junction point of the Canadian National Railways.

The Maritime Board of Trade referred to the Report of the Duncan Commission which said that the question of the retention of open gateways at Saint John and Ste. Rosalie Junction was still open for review by the Board. They argued that there is no indication that such a withdrawal of routing privileges was intended to be effected in the recommendations of the Duncan Commission. The Maritime Board of Trade accordingly submitted an amendment to Section 9 of the Maritime Freight Rates Act which would have the effect of enabling the Board to order alternate routings via Saint John or Ste. Rosalie.

The amendment proposed by the Maritime Board of Trade to Section 9 of the Maritime Freight Rates Act, in so far as it affects the present question, reads as follows:

"Add a new Subsection 5 to read:

'5. Where freight traffic similar to the preferred movements under this Act moved over any continuous route provided by any joint tariff of tolls or rates that existed prior to the coming into force of this Act, such traffic shall be deemed to be preferred movements if other companies owning or operating lines of railway in, or extending into, the select territory meet the statutory rates referred to in Section 7 of this Act.'

"Add a new Subsection 6 to read:

'6. The Board on the application of any company or person desiring to forward traffic over any continuous route in the select territory and involving movements similar to preferred movements which the Board considers a reasonable and practicable route, or any proportion thereof, may recommend a joint toll or tolls subject to this Act for such continuous route on acceptance of the application of this Act by the other companies defined under this Section, and in the event of the failure of the companies to agree on the apportionment the Board may, by order, apportion the toll or tolls and may determine the date when the toll or tolls shall come into effect.'"

The Canadian Pacific Railway favours the proposed amendment.

The Canadian National Railways strongly oppose the amendment on the following grounds:

- 1st. At the present time traffic originating at Canadian National points destined to points on the Canadian Pacific west of Montreal can only be routed via the Ste. Rosalie Gateway, but if an alternative routing via Saint John were permitted the shipper could give the short haul to the Canadian National and the long haul to the Canadian Pacific;
- 2nd. It is a principle of railway practice recognized in Canada and the United States that a railway should not be compelled to short-haul itself;
- 3rd. The matter of gateways is a large question and should be considered as a whole; it is not fair or just to consider one instance by itself as there are many situations where the Canadian National Railways is placed at a disadvantage as the Canadian Pacific Railway is placed here. It would require considerable study and much evidence of a technical nature before any recommendation could properly be made;
- 4th. There is no evidence which would justify a recommendation of the proposed amendment;
- 5th. It would divert traffic from the Canadian National, which that Company now has, to the Canadian Pacific; and
- 6th. The matter of gateways is one for the Board to deal with.

CONCLUSIONS

It is apparent from the decision of the Supreme Court of Canada, *C.N.R. v. Nova Scotia*, 1928, S.C.R. 106, that as the Act presently stands the alternative routing cannot be ordered by the Board and the Canadian Pacific Railway enabled to obtain the subsidy payable under the Act.

If the gateway were opened the Canadian National Railways could be compelled to short-haul itself.

The amendment to the Maritime Freight Rates Act proposed by the Maritime Board of Trade is not recommended.

28. EXTENSION OF SCHEDULE "A" OR TOWN TARIFF RATES TO NORTHERN ONTARIO

As explained in the section entitled "Distributing Rates" a scale of such rates, also known as "Schedule 'A' Rates" or "Town Tariff Rates", is in effect between the larger cities of Ontario and Quebec and points in the territory bounded on the west by Windsor, Ontario, on the east by Montreal, Quebec, and on the north by a line drawn from Montreal to Sault Ste. Marie, Ontario.

The scale also applies locally on the Ontario Northland Railway, which is owned by the Province of Ontario but is not subject to the Railway Act nor the Board of Transport Commissioners except for a small portion of the line entering into the Province of Quebec. The Schedule "A" scale however does not apply jointly between other railways and the Ontario Northland Railway.

The Schedule "A" rates were prescribed by the Board in the so-called International Rates Case in 1907 and approximated the level of rates on the American lines in that year between Detroit and Port Huron, Michigan, and Buffalo, New York and points in Canada, on the ground that Canadian shippers should enjoy the same rates as the Canadian railways were according to American shippers. Since the American lines themselves penetrated Canada in Southern Ontario and as far as Cornwall and Ottawa, Ontario, and Montreal, Quebec, it was this competitive situation which led the Board to remove the discrimination in 1907 between the international and local Canadian rates. The territory in which these rates applied was confined to points on and south of the Ottawa River, but was extended in 1922 to Sault Ste. Marie, Ontario.

North and west of the territory described, the rates to and from Southern Ontario and Montreal were made by "arbitraries" over North Bay in some cases, and in other cases on a basis which approximated the standard mileage rates.

The Ontario Mining Association complains of the high freight rates in the latter territory on explosives, iron and steel and chemicals—all carried at class rates or at commodity rates related to class rates. The Association refers to the principle of equilization of rates, in this case between Northern Ontario and Southern Ontario. It submits comparisons showing the rates from Montreal to the Northern Territory which are from 9.4% to 38.5% higher than from Montreal to Southern Ontario.

The Association makes the following observations and recommendations:

"It appears to us that the time has long passed since the railways should have been giving attention to the extension of the Southern Ontario basis to other points in the Province. The expansion of industry and of agriculture has been so vast since the Schedule 'A' basis was established in 1907 and even since its extension in 1922, that a widening of the scope of this scale appears to be now warranted."

As to the rates to the Ontario Northland Railway the Association states:

"To points on the Ontario Northland Railway, Schedule 'A' rates are exceeded by as much as 46% but these rates are not submitted for your consideration as we understand your inquiry is restricted to matters of transportation under Federal jurisdiction. However, in this connection, we draw attention to the fact that, as far as joint rates to Ontario Northland Railway points are concerned, the participating railways including the provincially owned Ontario Northland Railway, are not subject to the Board of Transport Commissioners for Canada, an anomaly which appears manifestly unjust."

CONCLUSIONS

With respect to joint rates, between the railways now subject to the Railway Act, and the Ontario Northland Railway, the position is as stated by the Association; as the Board has no jurisdiction over the Ontario Northland Railway it has, of course, no power to prescribe lower through rates, even though it has jurisdiction over the other railways. There is no recommendation to be made on this subject.

CHAPTER VI

RECAPITALIZATION OF THE CANADIAN NATIONAL RAILWAYS

Paragraph 2(c) of Order in Council P.C. 6033, directed the Commission to:

“Review the capital structure of the Canadian National Railway Company and report on the advisability, (or otherwise), of establishing and maintaining the fixed charges of that Company on a basis comparable to other major railways in North America.”

A. CAPITAL STRUCTURE OF CANADIAN NATIONAL RAILWAYS AS AT 31ST DECEMBER, 1949

The capital structure of the Canadian National Railways as at 31st December 1949 may be summarized as follows:

<i>Long Term Debt</i>	
Funded debt held by public.....	\$ 612,380,194
Funded debt held in special funds (made up mainly of Pension and Insurance Funds).....	12,485,725
Total funded debt.....	624,865,919
Capital stocks of subsidiary companies held by public.....	4,560,290
Total of system securities held by public or for special funds.....	629,426,209
Government of Canada — Loans.....	743,661,161
Total debt and system securities exclusive of proprietor's equity securities.....	1,373,087,370
<i>Proprietor's Equity — Government of Canada</i>	
1,000,000 shares of no par value capital stock of Canadian National Railway Company.....	18,000,000
5,000,000 shares of no par value capital stock of the Canadian National Railways Securities Trust.....	378,518,135
Capital Expenditure by Government of Canada on Canadian Government Railways.....	377,930,580
Total Proprietor's Equity.....	774,448,715
Total debt, system securities in hands of public, and proprietor's equity.....	\$2,147,536,085

Attached as Appendix “A” is a condensed statement of earnings as shown by the Company's financial statements for the years 1923 to 1949 inclusive.

B. FIXED CHARGES

“Fixed charges”, when applied to railroad accounts, has a very specific meaning as a result of the Accounting Classification for Steam Railroads, issued by the Interstate Commerce Commission, and which is used not only by all Class I railroads in the United States but has been adopted in large part by the Canadian National Railways and the Canadian Pacific Railway Company.

Under the form of income statement which is laid down in this accounting classification, the following items are included under the heading of “Fixed Charges”:

1. Rent for leased roads and equipment
2. Interest on funded debt
 - (a) Fixed interest not in default
 - (b) Interest in default
3. Interest on unfunded debt
4. Amortization of discount on funded debt.

As will be seen from the following summary of fixed charges of the Canadian National Railways for 1948 and 1949, rents for leased roads and amortization of discount are relatively unimportant and it would appear that the Order in Council has reference to interest charges on borrowed capital.

	1949	1948
Rent for Leased Roads and Equipment.....	\$ 699,844.10	\$ 720,599.32
Interest on Unfunded Debt.....	333,994.64	282,713.40
Amortization of Discount on Funded Debt.....	1,497,122.72	508,564.04
Interest on Funded Debt — Public.....	24,302,650.99	23,202,817.69
Interest on Government Loans.....	21,798,283.58	21,627,032.82
	<u>\$48,631,896.03</u>	<u>\$46,341,727.27</u>

C. HISTORICAL ORIGIN OF CAPITAL STRUCTURE

A concise history of the formation and the original composition of the Canadian National Railways is set out in the company's Submission (Exhibit 214) and is quoted hereunder:

"Canadian National Railway Company was incorporated by Chapter 13 of the Statutes of 1919. The preamble to the Act states that whereas His Majesty had acquired control of the Canadian Northern Railway System, it is expedient to provide for the incorporation of a company under which the railways, works and undertakings of the companies comprised in the Canadian Northern System may be consolidated and together with the Canadian Government railways operated as a national railway system. By Order in Council P.C. 2094, dated October 4, 1922, directors of Canadian National Railway Company were nominated. By Order in Council P.C. 115, dated January 20, 1923, the management and operation of Canadian Government railways was entrusted to the Canadian National Railway Company. By agreement dated January 30, 1923, approved by P.C. Order 181, dated January 30, 1923, the Grand Trunk Railway Company was amalgamated with the Canadian National Railway Company. The Grand Trunk Pacific Railway System which was fully controlled through stock ownership by the Grand Trunk Railway is now fully controlled by stock ownership by the Canadian National Railway Company. Under the Canadian National Capital Revision Act of 1937 the capital stock of the Canadian Northern Railway Company was transferred from the Government to the Canadian National Railway Company and therefore is now fully controlled by that Company through stock ownership. The situation therefore is that the Canadian National Railway Company has absorbed by amalgamation the Grand Trunk Railway Company of Canada, it controls the Canadian Northern and Grand Trunk Pacific Systems through stock ownership and has been entrusted with the management and operation of the Canadian Government Railways. These four principal railways including their subsidiaries are generally referred to as Canadian National Railways or Canadian National Railways System. Operations as a unified system commenced January 1st, 1923."

The capital structure of the Company was drastically revised as a result of the Capital Revision Act (1937). As stated in the Canadian National Railways' brief, this Act did not deal with the large funded debt of the system in the hands of the public but was a revision of the relationship between the Government and the Canadian National Railways. The following is a portion of the explanatory statement made by the Right Honourable C. D. Howe, Minister of Transport, before the Standing Committee on Railways and Shipping owned, operated and controlled by the Government, on February 18, 1937:

"For the information of the Committee, I submit a brief outline of the provisions of Bill No. 12.

"This is a measure to authorize, along constructive lines, reasonable adjustment of the present unbalanced and excessive capitalization of Canadian National Railways. The adjustment confines itself to the relationship between the Government and the railway and does not deal, in any way, with the funded debt of the railway in the hands of the public.

"As between the Government and the railway, the plan preserves in full all capital sums invested by the Dominion in the railway: any amounts to be eliminated relate to losses in operation and interest charges. Worthless capital stocks are to be written off on the basis of arbitration awards.

"At various times the proposal for C.N.R. capital adjustment has been attacked, particularly on the ground of its being some sort of an attempted deception of the people of Canada and as doing violence to the principles of sound finance. Such criticism is without foundation and obscures from the people of Canada the true purpose of the plan with its ultimate advantages to the Dominion and the railway. It ignores the expressed views of competent and impartial tribunals as well as the terms of the financing legislation since 1932. It runs counter to the usual financial and accounting practices of corporations under similar conditions. Further, this criticism refuses to recognize the effect of the events of the last twenty years on present day realities, in that the position of the Dominion has come to be essentially that of shareholder and proprietor in the Canadian National Railways—not of creditor in the ordinary sense.

"At a later point in my remarks I shall deal more specifically with these matters.

"2. *Summary of Adjustments*

"The main purposes of the capital adjustment plan are:

"First: to eliminate duplication of liabilities and losses of some one billion five hundred million dollars between published accounts of the National Railway System and those of the Dominion as shown by Public Accounts.

"Second: to centralize the corporate stock control by the Dominion of all companies now comprising the National Railway System through one company, i.e. the Canadian National Railway Company. This preliminary step is correlated to

- (i) the legal amalgamation of certain constituent companies of the system with a view to effecting ultimate savings in accounting and other costs, and
- (ii) the unification of certain funded debt issues of the National Railways through refunding issues in the name of the parent corporation, Canadian National Railway Company, for the purpose of bringing about savings in interest and other costs.

"Third: the elimination from the corporate books of those capital stocks determined by arbitration tribunals to be without value.

"Fourth: the preservation through the Securities Trust of the priority rights of the Dominion in respect of certain unguaranteed securities and subsidiary company capital stocks held by the public.

"The proposed revision of the railway balance sheet does not in any way increase the net debt of Canada as shown by Public Accounts. This is because the relative capital stocks (as written down) were acquired without cash payment by the Dominion and because the old debentures, the loans applied for both capital and deficits, the accrued interest on loans and the appropriations for Canadian Government Railways capital investment have already been embodied in the net debt of Canada.

"A condensed summary of the consolidated balance sheet revision, on the basis of the 1936 accounts, is as follows:

Write-down of capital stocks and old debentures by concurrent reduction of property accounts.....		\$ 262,770,972.03
Elimination of loans applied for deficits by concurrent reduction of deficit account.....	\$373,823,120.38	
Elimination of accrued interest on loans by concurrent reduction of deficit account.....	530,832,597.67	904,655,718.05
Total reduction in Capital and liabilities.....		<u>\$1,167,426,690.08</u>

"In addition to the above, the adjustment plan includes the transfer from 'Liabilities' to 'Dominion Government—Proprietor's Equity' of the following:

Loans applied for capital purposes — represented in the five million shares of capital stock of the Securities Trust.....	\$270,037,437.88
Appropriations for Canadian Government Railways capital investment...	388,290,263.52
	<u>658,327,701.40</u>
Transfer of residual value of Canadian Northern capital stock to the Canadian National Company and the issuance by the latter of its capital stock.....	18,000,000.00
Total of 'Dominion Government-Proprietor's Equity' preserved on the Consolidated Balance Sheet.....	<u>\$676,327,701.40</u>

"It is important to note that any capital investments by the Dominion are continued, at the face value, on the balance sheet without diminution; the amounts eliminated in connection with loans having to do only with the sums lost in operation and accruals of interest."

As stated in the foregoing the "Proprietor's Equity" as at the 31st December 1949 was \$774,448,715.00. The increase of \$98,121,014.00 since the 1937 revision is made up of the following:

Increase in the value attributed to the Canadian National Securities Trust.....	\$108,480,697
Represented by	
Surplus earnings capitalized 1941 to 1945, inclusive.....	\$112,502,061
Less—net capital losses.....	4,021,364
	<u>\$108,480,697</u>
Less—net reduction in value of Capital Expenditures by Government on Canadian Government Railways.....	10,359,683
	<u>\$ 98,121,014</u>

D. PROPOSALS

1. *Canadian National Railways*

In the brief submitted by the Canadian National Railways, the following recommendation appears:

"To achieve comparability of fixed charges with other major railways but excluding relief in respect of the lines operated in the public interest, that portion of the bonded indebtedness of the Canadian National as is held by the Government should be converted to equity capital. To provide the relief required in respect of the lines operated in the public interest, the publicly held bonded indebtedness of the Canadian National should be assumed in whole or in part by the Government or alternatively relief should be provided by such other action as can best be adapted to the needs of the situation."

In the statement submitted by the President of the Company, the original proposal is expanded and amended and the following specific proposal is made:

"It is submitted that by ordinary commercial standards, the entire interest-bearing capital should be converted to equity capital. However, in view of the practical difficulty in the way of converting the interest-bearing capital in the hands of the public into equity capital at this time; and having regard to the potential earnings of Canadian National System, which are considerable and may in some degree offset the adverse factors here considered; and on the assumption that the present imbalance which exists between railway rates and railway costs will be removed by adequate rate increases, I submit the following as an appropriate adjustment:

- (1) The \$760,000,000 of interest-bearing obligations held by the Government should be exchanged for equity capital and reflected in the balance sheet as such.
- (2) The Government should acknowledge an indebtedness to Canadian National in the amount of \$300,000,000 to bear interest at 3% until discharged. This would

be set up in the accounts of Canadian National as a capital fund to be drawn on from time to time to retire interest-bearing obligations in the hands of the public or for capital additions to the property. As consideration for the acknowledgement of the indebtedness aforesaid, Canadian National would issue a commensurate amount of equity stock to the Government.

- (3) Future development lines should be financed to the extent of not more than 60% by interest-bearing securities, the balance to be supplied by the Government against the issue by Canadian National of a commensurate amount of equity stock.

"It is my considered opinion, concurred in by the Board of Directors, that nothing short of these measures can be deemed adequate treatment of the capital structure of Canadian National. These measures, if put into effect, should enable Canadian National, on the average, to meet its fixed charges, including interest on funded debt.

"I submit very earnestly that the adjustment of the capital structure of Canadian National is long overdue and that for the reasons set forth in the Submission filed by Canadian National with you in October last, as well as for the further reasons already presented and to be presented during the course of these sittings, your Commission should recommend that it should now be adjusted."

In his introductory remarks the President also made the following statements:

"At the same time the financial results of the Canadian National distort the true efficiency with which the System's operations are conducted. It is urgent that the true operating results be clarified."

"A realistic capitalization of the Canadian National must of necessity be related to its future earning power. The historical record is only of value as offering some basis for forecasting future results. The earning power of the Canadian National from 1923 to date shows wide fluctuations. In some years earnings available for interest charges and other corporate needs have been substantial. In some other years, although there has been an operating surplus, there has been a deficit even before fixed charges. It is significant that the periods of high earnings were short-lived and came under boom or war conditions. They are therefore not to be taken as indicative of the situation which could be expected to prevail normally or in the future. Moreover, during periods of low traffic, maintenance costs were reduced to some extent at the expense of the property and therefore the historical record overstates its earning power."

"Future operations will be burdened to some extent by the deferred maintenance of property and the deferred renewal of equipment resulting from war services of the System. While, during the period of high earnings, reserves were set up to meet such expense, they have been seriously depleted by postwar inflation. Due largely to inflation, rolling stock of the System stands in the accounts at figures far less than replacement cost. As a consequence, as replacements occur there will be an inflation of capital which, in turn, will adversely affect earnings through increased depreciation and interest charges, even when due allowance is made for the fact that the new equipment will be of an improved design, have greater usefulness and be more economical to operate than the equipment being replaced."

The President states that after careful study he has come to the conclusion that to show results which would meet commercial tests, the amount of interest-bearing capital which should be included in the capital structure should be of relatively small proportions in contrast to the present total of \$1,344,000,000. He further discusses at some length what he terms the excessive capital burden of the Canadian National Railways summarized as follows:

"Interest-bearing obligations assumed with acquisition of insolvent railways	\$ 804,000,000
Run-down and semi-finished condition of properties taken over.	100,000,000
Co-ordination costs.	290,000,000
Canadian Government Railways.	135,000,000
Effect of Acquisition of unremunerative lines in National interest.	170,000,000
Effect of Development lines.	34,000,000
	<hr/>
	\$1,533,000,000

"This statement evidencing excessive capital debt burden of \$1,533,000,000 (which is in excess of the Fixed Charge Debt of Canadian National of some \$1,344,000,000) supports the conclusion that an undue proportion of the capital invested in the Canadian National system is represented by interest-bearing securities."

The effect of the Company's proposals on the 1948 figures of the Canadian National Railways, which are those referred to in the Company's submission and in the President's statement, would be to reduce the interest charges for the year from \$44,829,000 to \$14,202,000; that is, by a sum of \$30,627,000.

2. *The Canadian Federation of Agriculture*

The Canadian Federation of Agriculture made the following recommendation:

"We recommend that the amount of the 'Loans for repatriation of U.K. securities' and 'Loans for debt redemption' (\$670,365,090) be entered in the Proprietor's Equity (Government Equity) of the liabilities as additional securities trust stock, and the Government cancel these outstanding interest-bearing securities. The balance of the government-held debt would remain as railway debt."

3. *The Canadian Pacific Railway Company*

The Canadian Pacific Railway Company made the following general statements regarding the revision of the Canadian National Railways capital structure in its main submission (Exhibit 139A):

"54. Canadian Pacific has no direct interest in the financial affairs of Canadian National. It believes that the present management of Canadian National has achieved a high degree of efficiency in the operation of the railways committed to its charge. Any measures designed to provide an incentive to continued and increasing efficiency on the part of the Canadian National or any other railway are desirable. Nevertheless Canadian Pacific would be deeply concerned in any reduction in the fixed charges of Canadian National unless the principle is recognized that Canadian National should be permitted to earn a reasonable return on a reasonable level of railway property investment.

"55. Canadian Pacific as a privately-owned enterprise, is competing with Canadian National as a government-owned enterprise. Heretofore, Canadian Pacific has been the yardstick accepted by the Board in fixing the level of freight rates in Canada. It has no desire to exclude Canadian National as an element to be considered in fixing freight rates but it points out that unless rates are fixed at such a level as will enable Canadian Pacific to earn sufficient to provide a reasonable return on its property investment, it can no longer as a privately-owned enterprise attract to it the capital needed in its business. A reduction in the amount of the fixed charges of Canadian National, unaccompanied by some statutory assurance that its permissible earning power as a railway would not thereby be reduced, would offer a serious threat to the ability of Canadian Pacific to continue to function as a privately-owned railway system."

The Canadian Pacific Railway Company called three witnesses in connection with the Canadian National Railways recapitalization proposals. One of the witnesses recommended:

1. That the imbalance between revenues and the increased costs of labour and materials should be lessened as much as possible by further freight rate increases.
2. That \$391 million of interest-bearing obligations held by the government, which were issued in connection with the repatriation from the United Kingdom of C.N.R. securities, should be exchanged for income bonds in accordance with the suggestion of Mr. R. C. Vaughan and so reflected in the balance sheet.
3. That the acknowledgement of an indebtedness by the Government to the C.N.R. of \$300,000,000 should not be considered.
4. That future development lines other than those created for national policy reasons should, like all other additions and betterments, be financed in the normal commercial manner, and those created for national policy reasons financed entirely at government expense and their operations segregated as a government enterprise until they become commercially sound or become an integral part of the system.
5. That a portion of surplus earnings, after payment of interest fixed and contingent, should be retained to provide funds for improvements and betterments and the balance paid to the government as a return on its equity capital."

The Provinces did not make any definite recommendations on a revised capital structure for the Canadian National Railways.

E. CANADIAN NATIONAL RAILWAYS SECURITIES TRUST

The submission of the Canadian National Railways outlines the reasons for the creation of the Canadian National Railways Securities Trust, and its relation to the Railways. This submission may be summarized as follows:

The Securities Trust is a corporation created by Section 12 of the Canadian National Railways Capital Revision Act 1937. Its entire capital stock is held by the Minister of Finance on behalf of His Majesty. The stock was issued in consideration of the transfer to the corporation by the Government of its claims against the Canadian Northern, Grand Trunk and Canadian National Railways for loans and accrued interest thereon.

The Trust was created for the purpose of acquiring and holding the Government claims against the railway corporations in the same way and with the same rights as if they had been held by the Government. There were certain securities held by the public (now amounting to \$4,560,290) which it was considered might be improved or advanced in their ranking or priority if the Government claims against the various railway companies were cancelled.

Since the formation of the Securities Trust, a substantial portion of the Railways' securities has been retired, and as a result of this large debt reduction the securities held by the public have little significance in the over-all picture.

It is considered that the purposes for which the Trust was created could now be served just as effectively if the capital stock of the Trust were held by the Canadian National Railways rather than by the Government, and that such a procedure would simplify the capital structure of the Canadian National Railways without impairing the safeguards provided in the original arrangement or without changing the Government's interest in the Railways.

The submission recommends that the 5,000,000 no par value shares of the Securities Trust which are now held by the Government be turned over to the Canadian National Railways in exchange for an equivalent number of no par value shares of the Railway Company.

F. WHAT USEFUL COMPARISONS, IF ANY, CAN BE MADE IN THE CAPITAL STRUCTURE OF THE CANADIAN NATIONAL RAILWAYS, A GOVERNMENT-OWNED ENTERPRISE, AND PRIVATELY-OWNED RAILWAYS?

It is not clear from the terms of the Order in Council what is meant by comparability with the other major railways in North America. Comparisons can be and are made of fixed charges and funded debt on any one of the following bases:

- (a) The relationship of funded debt to the total capital structure of the company;
- (b) The relationship of the funded debt to the investment in railway property;
- (c) The relationship of fixed charges to gross earnings;
- (d) The relationship of fixed charges to earnings available to pay such charges.

Any one of these comparisons or a combination of them is useful and important when dealing with the capital structure of private corporations.

The Canadian National Railways, in its submission, and throughout the evidence of its witnesses, as well as in the arguments of Counsel, has dealt exhaustively with comparisons between the fixed charges and the funded debt of the Canadian National Railways and the Canadian Pacific Railway Company and certain Class I United States roads.

The Canadian National Railways dealt at length with the reasons for its present financial situation.

It is stated that the reasons for the difficulties are threefold:

- “(1) The Canadian National is burdened with excessive fixed charges.
- (2) The Canadian National is obliged in the public interest to operate, without due compensation, as a matter of national policy and as an instrument of national development, considerable mileage of marginal and non-paying lines.
- (3) Railway tariffs of rates and tolls have not kept pace with increased costs of labour and materials.”

These reasons do not appear particularly important in considering a revision of the capital structure of the Canadian National Railways (if that is deemed desirable) except to the extent that the Commission can learn from the past and avoid making changes which will be classed as mistakes by future generations. The Commission is not required to correct what are alleged to be past mistakes but rather, if it should be considered advisable, to suggest some revision of the present capital structure of Canadian National Railways and of its fixed charge burden, having regard to existing conditions and its earning power.

While it is not proposed to review here the arguments regarding the alleged mistakes of the past and in particular of saddling the Railways with \$804 millions of interest-bearing obligations at the time of the consolidation in 1923, it is nevertheless interesting to note that at the time these obligations were assumed by the Canadian National Railways, that company set up on its books an investment in road and equipment of \$1,801,583,000 for the Grand Trunk, Grand Trunk Pacific, Canadian Northern and Canadian Government Railways. While nothing was submitted to indicate what value should have been attributed to the investment in road and equipment of the above railways, it must be assumed that they had and have a substantial value.

The duty of the Commission after reviewing the capital structure, is to report on the advisability or otherwise of:

- (a) Establishing the fixed charges of the Railway on a basis comparable to other major railways in North America, and
- (b) Maintaining the fixed charges on a basis comparable to other major railways in North America.

The Canadian National Railways holds a position which is different from that of any privately-owned company. It would appear that the officials of the company subscribe to this view, as evidenced by the following statements in its brief:

“The Canadian National as a Government-owned System occupies a special place in the national economy. It is today in large measure the pioneering railway of the country. It embraces in its operated mileage, thousands of miles of what may well be called pioneering railways. It bears a large share of responsibility in the development of national resources.”

“Why Government money invested in the Canadian National which does not earn a direct interest return is regarded in some quarters as money lost is difficult to understand. A more correct view would be to regard it as an investment, furnishing essential transportation service, and gainfully employed from the standpoint of the over-all economy.”

“Applying such an adjustment of \$20,000,000, surpluses would have been enjoyed during the years 1925 to 1929 inclusive reaching a high of twenty-three odd million in 1928. In these circumstances lower freight rates following pressure for downward revision would probably have very considerably reduced if not entirely eliminated such surpluses.”

The foregoing would seem to indicate that in the view of the Canadian National Railways a capital revision on the basis recommended would not result in the earning of a surplus as the public would demand lower freight rates or, in other words, that no Government-owned railroad is entitled to earn any substantial surplus.

The brief contains the following statement:

"In addition, as mentioned elsewhere, the Canadian National operates in the national interest on a basis which cannot be justified commercially, very extensive lines of railway required for strategic, colonization, agricultural and development reasons."

All the emphasis in the submission of the Canadian National Railways is placed on achieving a comparable position with other Class I railroads as regards fixed debt. No account appears to have been taken of the fact that in the case of privately-owned and operated railways equity capital and the cost of servicing it plays a very important part in corporate financing.

Furthermore, on the basis of the above quotations it would appear as if the company recognized that there were very real differences between the aims and objects of a Government-owned enterprise operating "in the national interest on a basis which cannot be justified commercially, very extensive lines of railway required for strategic, colonization, agricultural and development reasons" and a privately-owned railway which must be operated at a profit if it is to survive.

In all comparisons which have been made by the Canadian National Railways, emphasis has been placed upon the fixed charges relating to fixed or funded debt and little, if any, account has been taken of (1) income taxes which are payable on the operating profits of private companies or (2) the necessity of such companies to show earnings on their equity capital in order to finance that part of the cost of the system which has not been financed by funded debt.

G. ARGUMENTS IN FAVOUR OF ESTABLISHING AND MAINTAINING FIXED CHARGES OF THE CANADIAN NATIONAL RAILWAYS ON A BASIS COMPARABLE TO THOSE OF OTHER MAJOR RAILWAYS

The arguments in favour of a reorganization of the capital structure of the Canadian National Railways and a scaling down of its fixed charges were set forth in the submission of the Company, and were discussed by the Railways' witnesses. As the evidence of the witnesses was in the main an enlargement and explanation of the statements in the brief, the following quotations have been taken from the Railways' submission as a concise expression of its views on the subject:

"The adjustment proposed would not cost the Government any money. As the sole shareholder any gain or loss is for account of the Government. In the final analysis a fixed interest rate is meaningless since if there is a deficiency it must be provided by Government and likewise Government will take any surplus there may be after payment of interest on the publicly held debt. It is more a matter of removing from railway to public accounts the extent to which commercial considerations have been subordinated to considerations of broad national policy."

"If it is sound policy to get debt and fixed charges down to manageable proportions, which other railways are doing, and which policy is fostered by the U.S. Government regulatory authority, then the Canadian National also should be given an arrangement under which this might possibly be done."

The following is a summary of certain points raised in the Company's submission:

- (1) The value of the Canadian National Railways to the national economy is obscured by its unfavourable financial results, which in large part arise from an excessive debt burden taken over at the date of the company's organization.
- (2) Prior to 1923, capital expenditures of the Canadian Government Railways had been financed by Parliamentary appropriations and interest charges absorbed in public accounts. Subsequent to that date, such expenditures were financed by the company and interest charges included in the company accounts.
- (3) The Capital Revision Act of 1937 dealt only with debts due to the Government, and from 1932 interest has been paid on all capital loans.
- (4) In the period 1923 to 1931, \$456,345,000 was expended for investment purposes and financed by the sale of bonds to the public. By 1931, annual interest charges had reached a total of \$55,587,000 and no portion of this was reduced by the Capital Revision Act of 1937.
- (5) The book value of the Canadian National Railways investment in road and equipment per mile of line was \$88,769 at 31st December, 1947, (\$91,847 at 31st December, 1948). These figures are about 30 per cent less than the average United States Class I roads and about equal to those of the Canadian Pacific Railway Company.
- (6) Railroads of the United States have followed a policy of reducing funded debt and interest charges through utilization of surplus earnings and by receivership proceedings during the period 1923 to 1947. A similar procedure was not open to the Canadian National Railways, which increased its debt in the period by \$451 millions.
- (7) Interest-bearing debt is equivalent to 64.1 per cent of the investment in road and equipment of the Canadian National Railways as compared to 31.6 per cent for the Canadian Pacific Railway Company and 32.1 per cent for United States Class I roads.
- (8) Average earnings per mile per annum have been about 9 per cent less for the Canadian National Railways than for the Canadian Pacific Railway Company and about 51 per cent less than Class I roads in the United States.
- (9) Average traffic density is about 7 per cent lighter on the Canadian National Railways than on the Canadian Pacific Railway Company and about 50 per cent lighter than on Class I United States roads.
- (10) Average passenger traffic density has been about 17 per cent lighter on the Canadian National Railways than on the Canadian Pacific Railway Company and about 58 per cent lighter than on Class I roads.
- (11) Fixed charges of the Canadian National Railways are about twice as great, percentage-wise, of gross revenue, as those of the Canadian Pacific Railway Company or United States Class I roads.

In the Company's brief it is submitted for the reasons summarized in the foregoing that the fixed charges of the Canadian National Railways are far in excess of its normal earning capacity. The following statement is made:

"The portion to be represented by interest charge debt should in some considerable measure be related to the amount of net earnings which may be expected under all conditions to be available for the payment of interest thereon."

A witness speaking on behalf of the Company submitted other reasons for consideration. Although he described them as "largely psychological", he stated that this did not lessen their importance. These reasons may be summarized as follows:

- (a) As the Railways are public property, the public is entitled to a report on its operations in comprehensible form, which is not now possible, as the magnitude of the deficit overshadows other considerations.
- (b) Management is blamed by uninformed opinion for the large deficits which are inescapable under existing circumstances, and the view is widely held that the Railways cannot be operated at a profit.
- (c) These factors, singly and in combination, are injurious to the morale of officers and employees alike who are responsible for the company's administration and operation.

As stated in the Railway's submission, the adjustment would not cost the Government any money. Conversely, it would not save any money. Looking at the combined Government and Railways picture, it appears that the advantages to be gained are of a psychological nature and no attempt has been made to measure in dollars and cents any real savings which might result.

If, as suggested by the Railways, the revision of the capital structure would remove "from Railway to public accounts the extent to which commercial considerations have been subordinated to considerations of broad national policy"; this argument alone would be of sufficient importance to merit the most serious consideration. It would seem, however, that the operating accounts of the company must include innumerable charges in respect of the various lines operated as a result of broad national policy which would not be affected by a revision of the fixed charges. If this is the case, then revising fixed charges deals only with one phase and perhaps the least important phase, of those operating expenses which have arisen as a result of broad national policy.

H. CANADIAN NATIONAL SUBMISSION RESPECTING CAPITAL BURDEN

The Canadian National Railways develops its case to show that it has an excessive capital burden of \$1,533,000,000 (which is in excess of the fixed debt burden at 31st December 1949 of \$1,368,527,000.)

The Company expands its argument to show that this excessive capital burden of \$1,533,000,000 may be divided into two classes:

- (a) The original interest bearing debt of \$804,000,000 taken over in 1923 plus additional expenditures of a capital nature which have not resulted in additional earnings;
- (b) The capitalized value of the excess operating costs resulting from (1) combining the various roads into one system, and (2) the acquisition of certain unremunerative lines.

The Company submits that the burden resulting from the excess costs of combining the various railways into one system and the acquisition of certain unremunerative lines constitutes an operating disability and has said that the capitalized value of this disability may be described as "negative capital". (This expression "negative capital" was defined by one of the Company's spokesmen as follows: "It is nothing but a graphic phrase expressing the amount of capital that you would have to have in reserve to produce by its interest return the amount of the disability in operating account that you are suffering.")

An analysis of the Company's proposal shows that the excessive capital burden of \$1,533,000,000 is divided as follows:

Fixed Debt, which in the opinion of the Canadian National Railways should be converted to equity capital

Interest bearing obligations assumed in 1923.....	\$ 804,000,000
Necessary improvements to properties which it was contended did not add to the earning power of the system.....	100,000,000
Co-ordination costs for main line connections, belt lines and terminal arrangements.....	40,000,000
Expenditures for additions and betterments and rolling stock of Canadian Government Railways and additional costs of Pension Plan for Canadian Government Railways.....	135,000,000
Cost of acquisition and rehabilitation of certain unremunerative lines..	18,000,000
40% of expenditures on development branch lines.....	34,000,000
	<hr/>
	\$1,131,000,000

Negative Capital

Capitalized value of excess operating expenses as a result of combining the various roads into one system.....	\$ 250,000,000
Capitalized value of the increased operating expenses resulting from the acquisition of certain unremunerative lines.....	12,000,000
Capitalized value of estimated excess operating costs resulting from the acquisition of the Newfoundland Railway and Steamship services	134,000,000
Capitalized value of excess operating costs resulting from the acquisition of the Temiscouata Railway.....	6,000,000
	<hr/>
	\$ 402,000,000

The Company's contention is that by commercial standards the entire fixed debt burden should be converted to equity capital.

It was stated however that in view of the difficulty of converting interest bearing capital in the hands of the public into equity capital and having regard to the potential earnings of the Canadian National Railways, and on the assumption that the imbalance between rates and costs will be corrected, an appropriate adjustment would be:

- (1) That the \$760,000,000 of interest bearing obligations held by the Government at December 31st, 1948, be converted to equity capital;
- (2) That the Government should acknowledge an indebtedness of \$300,000,000 to be drawn on for retirement of interest-bearing obligations and capital additions and for which equity stock would be issued as and when the amounts were drawn;
- (3) That future development lines be financed to the extent of not more than 60 per cent by interest bearing securities and the balance by equity capital.

The conversion of the \$760,000,000 of interest bearing obligations of the Government into equity capital and the indebtedness of \$300,000,000, totalling in all \$1,060,000,000, constitutes a settlement in respect of alleged past sins and mistakes.

The proposal as to the financing of future development lines on the basis of not more than 60 per cent of interest bearing securities is designed to prevent the recurrence of similar mistakes and the piling up of excess fixed charges.

It is true as the Company suggests that it would be difficult to convert interest bearing securities in the hands of the public into equity securities. However, the same results could be achieved if the Government's indebtedness to the company was of such an amount that interest thereon was equivalent to the interest on the company's debt to the public.

No explanation has been offered as to why an adjustment of \$1,060,000,000 is asked for instead of the excess capital burden of \$1,533,000,000 referred to in the company's submission, or the total fixed interest debt of \$1,344,000,000 (December 31st, 1948) except the general statement that it represents a compromise of what the Company refers to as its claim against the Government.

The President stated that "a realistic capitalization must of necessity be related to its future earning power". However, no information has been offered as to what the company considers are the potential earnings or what additional revenues could be expected from a correction of the imbalance between costs and rates, except the general statement that it is not anticipated that any substantial surpluses "on the average" would be realized if the Company's proposals are put into effect.

I. OBJECTIONS MADE TO RECAPITALIZATION PROPOSALS

The only evidence in opposition to or criticism of the Canadian National Railways' proposal was put forward by three witnesses appearing for the Canadian Pacific Railway Company. The evidence of these witnesses was directed in the main to showing the possible adverse effects of the proposed reorganization on the Canadian Pacific Railway Company. Without in any way discounting or disregarding the importance or relevance of the evidence submitted by these witnesses, the reasonable course to pursue is to consider in the first place the Canadian National Railways' proposals on their own merits without regard to the Canadian Pacific Railway Company. If the conclusions so reached would have a harmful effect on that Company, then consideration would need to be given to changes in those conclusions which could or should be made.

After reviewing the proposals and considering the evidence, it would appear that the objections to the proposals (exclusive of those relating directly to the Canadian Pacific Railway Company) fall under three headings:

- (1) The fixed charges of a private company only represent a portion of the total financing charges involved in dealing with that company's capital. After paying the interest on fixed debt, a private company must have sufficient earnings if it is to maintain its credit, to set aside certain reserves for contingencies, pay a reasonable dividend to shareholders and pay to the various taxing authorities approximately 45 per cent on all earnings realized for these purposes. Therefore, while the fixed charges of the Canadian National Railways are high in relation to privately-owned railways, the Canadian National Railways, being a Government enterprise, is not under the necessity of showing earnings in order to maintain its credit. Thus, a comparison of fixed charges of the Canadian National Railways with the fixed charges of privately-owned railways does not give a true picture of the situation.
- (2) Another objection to establishing fixed charges as a percentage of revenue similar to that of other railways is the effect this might have on the rate structure. If the revenues and profits of the Canadian National Railways should increase over the next few years and earnings should be as great as those realized during the war years, it is recognized by the Canadian National Railways that such profits would give rise to demands for lower rates regardless of the earnings required to service the investment in rail property.
- (3) The proposal confines itself to a transfer from funded debt to capital stock of the total loans owing to the Government and a further proposed subscription to capital stock by the Government in the amount of \$300,000,000. It does not provide for any comprehensive reorganization of the capital structure and revision of the values of the investment figures to show what portion of the amount invested in railway property

should earn a reasonable return and what portion constitutes a drain on the earnings of the System. Although exhaustive comparisons have been made of the fixed charges with those of privately-owned companies in order to show that present fixed charges are excessive, it is admitted that the Canadian National Railways is not, in fact, comparable to a private company. While officials of the company have argued that fixed charges should be related to earning power, there is no estimate of normal earnings beyond certain general statements that under the plan no substantial surpluses would on the average be realized.

A witness for the Canadian National Railways expresses the view that if the relief asked for is given, the Canadian National Railways would "on the average" be free from a deficit position and have a moderate amount left over to be re-invested in the property.

However, there is no evidence which leads one to believe that even if the fixed charges or capital structure are revised in accordance with commercial principles, they will be so maintained for any length of time, as the factors governing the financing of commercial enterprises have little bearing in the case of Canadian National Railways.

The objections of the Canadian Pacific Railway Company are based on the fear that the Canadian National recapitalization proposals constitute a threat to the continued existence of the Canadian Pacific as a private corporation. The Canadian Pacific fears that Canadian National earnings on the basis of the proposed capital structure would give rise to demands for lower freight rates regardless of the value of railway property or the earnings required to service the investment therein.

J. CONCLUSIONS

The comparisons which have been made in the Canadian National Railways' brief of the fixed charges of various railways and their relation to gross revenues and to funded debt and total capital of the said railways leads to the conclusion that there is no uniform pattern which has been followed by railway companies in their financing. For instance, the comparisons which have been given show that in 1947 the fixed charges of the Canadian National Railways were the equivalent of 10.48 per cent of its revenues, whereas the Pennsylvania Railroad's fixed charges amounted to 7.88 per cent of its revenues and the fixed charges of the Santa Fe were only 1.89 per cent of its revenues. In that same year the fixed charges of the Canadian Pacific Railway Company amounted to 4.6 per cent of its revenues.

It would seem that comparisons of the fixed charges of one railway with those of another and of the percentage of fixed charges to revenues do not establish a case either for or against the comparability of total financial charges. It is doubtful whether a useful comparison can be made without taking into account all the financial charges including taxes on income and dividends on stock which a company is required to earn if its credit is to be maintained.

The financial policy followed by the management in financing the construction and operation of a railway will be the determining factor for the amount of fixed charges and their relationship to revenues and railway assets. The financial policy of a privately-owned railway will be determined from time to time by management, having regard to the conditions of the money market in which the funds must be raised and other factors having a bearing on the situation. The conditions which give rise to management's decisions in the case of a private company are not present in the case of the Canadian National Railways.

While there is no doubt that in bad times when earnings are low it is advantageous for a private company not to have heavy bond interest payments to meet, nevertheless it is also true that smaller earnings are required to service

bonds than an equivalent amount of common stock. For example, it requires earnings of only three and a half million to pay bond interest on a hundred million issue with a coupon rate of $3\frac{1}{2}$ per cent. A common stock issue of a similar amount would probably require a dividend rate of 5 per cent. In order to have five million dollars available to pay dividends, gross earnings in excess of eight millions are required to provide for the income tax liability and leave an amount sufficient to pay the dividend.

The disadvantages of the high fixed charges of the Canadian National Railways are largely, if not entirely, of a psychological nature and do not in fact result in any financial embarrassment to the Company or affect its credit, as deficits are paid by the Government.

The Canadian National Railways' witnesses and counsel contended that the revision of the capital structure of the Company and of its fixed charges has nothing to do with the rate structure or with rates. The view does not appear to be justified because if fixed charges of the Canadian National Railways were established on a very low level without some safeguards, earnings in excess of fixed charges would result in misleading comparisons giving rise to unwarranted demands for lower freight rates. Rates which do not provide a reasonable return on money prudently invested in transportation property will, in the long run, result in insufficient earnings being available for private companies to service their securities and can only lead to their insolvency or absorption by the Government.

Practical and useful comparisons cannot be made between the fixed charges of the Canadian National Railways, a publicly-owned company, and those of privately-owned companies. Comparisons, if they are to be made between the Canadian National Railways and privately-owned companies, should be on the basis of total capitalization and of financial charges required to service the investment in transportation properties. In other words, it should be recognized that, in addition to fixed charges, a private company must, over a period of time, have sufficient earnings to pay reasonable dividends to its shareholders and set aside reserves for a rainy day. Before dividends can be paid and reserves set aside, approximately 45 per cent of all earnings must be paid as income tax under present tax rates.

The evidence submitted does not establish comparability with other railways; the Canadian National Railways' witnesses and counsel have admitted that complete comparability cannot be achieved. Any privately owned railway would go into bankruptcy under comparable circumstances, and its reorganization plans would not be affected by considerations of public policy which must play a part in a public utility owned and operated by the Government.

What should be realized is that, while the Canadian National Railways and Canadian Pacific Railway Company could and should compete in so far as operations and services are concerned, there are many ways in which the two systems are not comparable, and it is neither practical nor desirable to establish the capital structure and the fixed charges of the Canadian National System on a basis comparable with the privately-owned railway.

The evidence does not establish that the revised fixed charges of approximately \$15,000,000 are reasonable in relation to prospective earnings.

A restatement of the Company's income for 1949 (based on the assumption that certain rate increases had been in effect for the whole year and giving effect to the Company's capital adjustment proposals) shows an estimated surplus of \$20,867,000 after the payment of fixed charges (Exhibit 277). A witness appearing for the Canadian Pacific Railway Company restated this estimate and showed a surplus of \$28,867,000; the difference being accounted for by the different treatment of a credit of \$8,000,000 from the deferred maintenance reserve. A witness on behalf of the Canadian National Railways said not excess maint-

enance was done during 1949 and therefore it was not proper to reduce the expenses by this credit, even though as a matter of policy the company had transferred the credit from the deferred maintenance reserve.

The evidence shows that it would be most difficult to prove how much, if any, extra or deferred maintenance was carried out in 1949 and, therefore, there is left a surplus for that year, after fixed charges, of a minimum of \$20,867,000 or a maximum of \$28,867,000, if the increases and the Company's proposals had been in effect the entire year.

Exhibit 277 includes a provision for income taxes. As the Canadian National Railways is a government-owned corporation, and of course is not subject to income tax, this has not been taken into account in the consideration of the restated earnings.

There is no suggestion by any of the witnesses that the increases shown in the restatement of 1949 income correct the imbalance between rates and costs. In fact, it has been stated that there is still a serious imbalance after giving effect to those increases.

There are obviously some difficulties and objections to the carrying out of the third part of the Company formula recommending that not more than 60 per cent of development lines be financed by interest-bearing securities.

In the first place, and perhaps most important, there is no suggestion as to who is to decide what formula is to be applied in determining what are development lines and how much of the 60 per cent will be financed by the interest-bearing securities.

In the second place, it is interesting to note that interest bearing securities now represent less than 64 per cent of the total debt and proprietor's equity of the company and less than 66 per cent of the investments less reserves and unadjusted credits.

It is a fact that while claims of excess costs are justified in many instances, in other instances rail lines of value and with earning power were transferred without any corresponding debts or debt charges. Having regard to this, it is doubtful that a rigid and fixed formula of the nature proposed would be effective or desirable as a means of keeping fixed charges within reasonable bounds.

The Canadian National Railways has established a case for reduction of its fixed charges and for the desirability of the Company being able to accumulate out of earnings a reserve or "something to come and go on".

It does not seem, however, that the Company's proposals should be adopted in toto. It seems advisable, rather, to depart from them and to suggest remedies which appear to be better adapted to meet the unfavourable position in which the Company now finds itself, but which take into account the fact that the Company is government-owned, and must perform such services as are delegated to it by Parliament and cannot be judged wholly on the basis of commercial standards.

No evidence was produced as to the appropriate total capitalization or as to the investment in rail property which should be expected to earn a return.

It was generally agreed among those who appeared before the Commission that it is undesirable for the Canadian National Railways to have recurring deficits in the face of what has been found by the Board of Transport Commissioners to be efficient management. On the other hand, it must be borne in mind that if fixed charges were reduced to a point where substantial surpluses are shown, the shipper and his representatives might not look with favour on the payment of dividends on shares held by the Government.

The problem seems to resolve itself into a search for a capital structure which would not impose too heavy a fixed charge burden in bad years but would ensure that a reasonable portion of surplus earnings would be paid to the owners as a return on invested capital in good years.

A revision of the capital structure or fixed charges of the Canadian National Railways should make provision for the following:

- (1) Some relief from the present heavy fixed charges so that deficits will not be experienced under efficient management when normal revenues are obtained.
- (2) The accumulation out of earnings, when available, of some reserve, or what has come to be known as "something to come and go on" to provide for additions and betterments.
- (3) The payment to the Government of the balance of the earnings, or some substantial portion of that balance, after interest charges on debts to the public and provision for a reasonable reserve.

K. RECOMMENDATIONS

In the absence of what appears to be satisfactory evidence as to normal earnings (and one is inclined to agree with the Company's witnesses that in the twenty-seven year period of the Company's operations it is a practical impossibility to determine "normal earnings"), and having regard to the information put before the Commission the following recommendations are made:

1. That the Canadian National Railways be reimbursed annually by the Government for the operating losses of the Newfoundland Railway and Steamship Services and also for capital expenditures in respect of the said Railway and Steamship Services.

This change is intended to be of a temporary nature as is explained hereafter and is made feasible by the terms of Section 19 of Chapter 172 of the Statutes of 1920, The Canadian National Railways Act, and of the Order in Council passed pursuant thereto, which provides for reconsideration of the treatment of this Railway taking place "from time to time".

That the amounts received as reimbursement for operating losses be shown as a separate item under the caption "Other Income", which is now found in the Consolidated Income Account of Canadian National Railways.

That annual capital expenditures reimbursed to Canadian National Railways, together with the cumulative total of such capital expenditures be shown as foot-notes to the annual statements of Canadian National Railways.

2. That Government loans totalling \$743,661,000 at 31st December, 1949, be converted into three per cent income debentures on which interest would only be paid if earned and would not be cumulative.
3. That the shares of the Canadian National Railways Securities Trust now held by the Government be turned over to the Canadian National Railways in exchange for an equal number of shares of the latter company. This would serve to simplify the capital structure of the system, but would not change its total capital or the Government's equity therein.
4. That after payment in the first place of the interest charges on debts due to the public, the Canadian National Railways be allowed to accumulate out of earnings in each year a reserve or "something to come and go on," such reserve to be not more than the lesser of:

- (a) one-third of the income after providing for all charges and deductions from income except interest on the Company's obligations, or
 - (b) the balance of the income after payment of interest on debts due the public.
5. That after payment of the interest on the debts due to the public and the setting aside of the reserve or "something to come and go on" referred to in (4) above, an amount equal to three per cent of the then outstanding Government loans, or the balance of the earnings, whichever is the lesser, be paid to the Government.
 6. That to the extent that reserves as defined in paragraph 4 above and surpluses have been accumulated, losses, if and when realized, should be charged against such reserves and surpluses. If no such reserves or surpluses are available against which to charge the losses, such losses be reimbursed to the Company by the Government.
 7. That any capital required to finance the company, in addition to funds provided from operations and payments made under the provisions of paragraph 6 above, be obtained from the sale of bonds to the public and income debentures to the Government.
 8. That surplus earnings, if any, after the payment of interest on debts to the public, the provision for reserves or "something to come and go on" outlined in 4 above, and the payment of interest on Government loans, be dealt with at the discretion of the directors.

If the foregoing recommendations are adopted, no deficits will be realized so long as income, after providing for all charges and deductions from income except interest on the Company's obligations, is sufficient to provide for interest on funded debt due the public, which interest amounted to \$24,302,650 in 1949.

The following are examples illustrating the effect of the foregoing recommendations at various levels of earnings and on the basis of the 1949 interest of \$24,302,650 on the public debt:—

Example 1

Net Income available for the payment of interest.....		\$25,000,000
Interest on funded debt—public.....	\$24,302,650	
Appropriated as special reserve in accordance with the foregoing recommendations.....	697,350	25,000,000

Example 2

Net Income available for the payment of interest.....		50,000,000
Interest on funded debt—public.....	24,302,650	
Appropriated as special reserve in accordance with the foregoing recommendations.....	16,666,667	
Interest on income debentures held by the Government....	9,030,683	50,000,000

Example 3

Net Income available for the payment of interest.....		70,000,000
Interest on funded debt—public.....	24,302,650	
Appropriated as special reserve in accordance with the foregoing recommendations.....	23,333,333	
Interest on income debentures held by the Government....	22,309,830	69,945,813
Surplus.....		54,187

Example 4

Net Income available for the payment of interest.....		\$75,000,000
Interest on funded debt—public.....	\$24,302,650	
Appropriated as special reserve in accordance with the foregoing recommendations.....	25,000,000	
Interest on income debentures held by the Government....	22,309,830	71,612,480
Surplus.....		3,387,520

Careful consideration has been given to the problems resulting from the acquisition of the Newfoundland Railway and Steamship Services.

It is apparent from the evidence that substantial sums of money must be expended on the Newfoundland system. During the initial stages of operation it is likewise apparent that there will be substantial operating deficits on the system and it seems that it would be better not to impose on the Canadian National Railways the extra burden of both deficits on operation and heavy capital charges. It is for these reasons that it is recommended that the Government should bear the operating losses and capital expenditures of the system. However, it is also recommended that this arrangement be regarded as a temporary one to continue only until such time as the major capital expenditures have been completed and until the operations of the service are on a profitable basis or the losses are reduced to a point where they can be absorbed in the Canadian National accounts without unduly affecting the overall system results. This adjustment will lighten the burden on the Canadian National Railways during what will probably be a difficult period.

It is also recommended that in the case of any developmental line which may hereafter be constructed or acquired by the Government, in respect to which the capital expenditures required are large and losses in operation are likely to be incurred for some time, the entrustment of the said line to the Canadian National Railways be made on the same terms as are proposed herein in regard to the Newfoundland Railway.

The foregoing proposals taken together would, if adopted, relieve the Canadian National Railways of fixed charges on Government loans, which in 1949 amounted to \$21,798,000. They would also relieve the Railways of the burden of the operating loss estimated by the Company at about \$4,000,000 in respect of the Newfoundland Railway and Steamship Services and of the problems involved in financing improvements, betterments and rolling stock relating to these services.

L. OBSERVATIONS

There are no particular operating figures or statistics available which will establish an iron-bound case for the proposals which have here been made nor for any others which may have been or could be advanced. These proposals, however, do recognize two major points:

1. The excessive costs of operating the Newfoundland Railway, resulting from Government policy in the acquisition of those services. It seems reasonable to recommend that the Canadian National Railways be relieved of these costs.
2. Government loans are now in reality income securities and there is no reason why that situation should not be given effect to in the accounts of the Railways and the Government.

It may seem somewhat contradictory to recognize the excess costs in respect of the Newfoundland Railway and Steamship services and disregard other claims which have been made in respect of excess debt burden and so-called negative capital arising from the acquisition and operation of other railways acquired over the years. The Newfoundland Railway is one of the larger items put forward in the Railways' case, and furthermore its losses are something which should be capable of reasonably exact measurement. It is not an integrated segment of the system and there should be no difficulty in separating the expenses and expenditures of that railway from the rest of the system. This does not appear to be practical or desirable in connection with certain other lines referred to in the railways' submission as being unremunerative.

While on first examination, the theory of "negative capital" and the remedy proposed by the Canadian National Railways, may be ingenious, it must be

pointed out that the situation as a whole cannot be appraised adequately unless recognition is also given to the value of the Company's high density traffic lines. The value of these lines must offset completely or to a substantial degree the burden of excessive expenditures which gave rise to the claim for negative capital. This theory of negative capital is at best however a novel theory, subject to possible errors of such magnitude that one should hesitate to accept it as a proper basis for recapitalization.

The earnings of prior years have not been recast to show the effect of these recommendations, as the Commission is in agreement with the views which have been generally expressed that the past earning record either of the whole period or for any particular group of years does not necessarily reflect normal conditions or an accurate estimate of what may be expected in the future.

It is true that if these recommendations had been in effect for 1948 and 1949, substantial deficits would have been realized in both years. This would have also been the case under the Company proposals (and would likely be the case in any period when there is a serious imbalance between rates and operating costs). Capital revision cannot be expected to correct such imbalances.

The Company recognizes that fixed charges should not be related to earnings which result from operations when a serious imbalance exists between costs and rates. The Commission is completely in accord with that view.

In recent years Canadian National Railways' earnings have resulted from rates established on the basis of Canadian Pacific Railway's requirements. If this continues to be the case in the future, and if rates are established which will enable the Canadian Pacific Railway Company to earn its requirements as determined by the Board of Transport Commissioners, it seems assured that on the average Canadian National Railways' earnings will be more than sufficient to pay interest on its debt to the public.

If the recommendations of the Commission are carried out, and if good judgment and common sense are exercised in the future in the financing of improvements and betterments, there is no reason why the Canadian National Railways should again be burdened with excessive fixed charges.

These recommendations have been formulated without ignoring or losing sight of the objections raised by the Canadian Pacific Railway Company to the Canadian National recapitalization proposals. If they are adopted it seems clear that any rate-making body looking at the requirements of the Canadian National Railways must give consideration not only to the interest on the debt to the public but also to the special reserve which is recommended and to the interest on government debentures or loans.

There appears to be no reason to recommend any change in a transportation policy which has provided the Canadian people with efficient rail transportation services through the medium of a private company competing with a government-owned railway. The Commission believes that these recommendations, if carried out, will serve to continue this policy and will provide the Canadian Pacific Company with the protection to which it is entitled and which it needs if it is to continue to function as a healthy and vigorous private corporation.

A realistic approach to the recapitalization of the Canadian National Railways must recognize: *First*, that it is not a privately-owned company and has, as such, advantages, e.g. exemption from income tax and relief from credit problems; *Second*, that it must operate railways in the public interest regardless of whether or not they may be profitable; *Third*, that its earnings are consequently harder to forecast than in the ordinary case; *Fourth*, that considerations ordinarily applicable to private companies on a recapitalization do not apply to it with anything like the same force or effect. These recommendations take cognizance of these factors.

APPENDIX "A"

CANADIAN NATIONAL RAILWAYS

STATEMENT OF RESULTS OF OPERATIONS FOR THE YEARS 1923 to 1949

Years	Revenues	Income available for fixed interest charges	Fixed interest charges	Deficit* or surplus
1923.....	\$ 256,961,590	\$ 12,041,187	\$ 35,041,380	\$ 23,000,193*
1924.....	239,596,670	18,187,478	38,361,704	20,174,226*
1925.....	249,411,884	30,633,059	40,438,235	9,805,176*
1926.....	270,982,223	40,769,854	39,197,233	1,572,621
1927.....	274,879,118	36,106,796	40,526,097	4,419,301*
1928.....	304,591,268	45,274,632	41,810,880	3,463,752
1929.....	290,496,980	33,242,348	45,503,979	12,261,631*
1930.....	250,368,998	15,639,024	51,316,121	35,677,097*
1931.....	200,505,162	5,381,293*	55,587,145	60,968,438*
1932.....	161,103,594	3,876,448*	56,965,279	60,841,727*
1933.....	148,519,742	2,489,961*	56,465,427	58,955,388*
1934.....	164,902,502	7,403,845	55,811,746	48,407,901*
1935.....	173,184,502	6,047,327	53,468,792	47,421,465*
1936.....	186,610,489	5,881,229	49,184,623	43,303,394*
1937.....	198,396,609	8,287,228	50,633,096	42,345,868*
1938.....	182,241,723	3,549,049*	50,765,147	54,314,196*
1939.....	203,820,186	10,635,023	50,730,543	40,095,520*
1940.....	247,527,225	33,474,443	50,439,487	16,965,044*
1941.....	304,376,778	54,361,316	50,344,989	4,016,327
1942.....	375,654,544	74,045,461	48,982,193	25,063,268
1943.....	440,615,954	85,302,456	49,663,044	35,639,412
1944.....	441,147,510	71,096,564	48,069,640	23,026,924
1945.....	443,773,394	71,084,273	46,328,143	24,756,130
1946.....	400,586,026	35,719,527	44,681,097	8,961,570*
1947.....	438,197,980	27,939,150	43,824,344	15,885,194*
1948.....	491,269,950	11,297,109	44,829,850	33,532,741*
1949.....	500,723,386	4,057,907	46,100,934	42,043,026*
TOTAL.....	\$7,840,445,987	\$723,230,485	\$1,285,071,148	\$561,840,663*
Average 1923-1949.....	\$ 290,386,888	\$ 26,786,314	\$ 47,595,227	\$ 20,808,913*

*Denotes red figures.

CHAPTER VII

ACCOUNTING AND STATISTICS

The Order in Council requires this Commission to:

“Review the present day accounting methods and statistical procedure of railways in Canada and report upon the advisability of adopting, (or otherwise), measures conducive to uniformity in such matters and upon other related problems such as depreciation accounting, the segregation of assets, revenues and other incomes, etc., as between railway and non-railway items.”

A. INTRODUCTION

While the Order in Council refers to depreciation accounting and the segregation of railway and non-railway items as being problems related to uniform accounting, they are in fact part and parcel of a system of uniform accounts. No measures conducive to uniformity in accounting and statistical methods can receive serious consideration without taking into account the problems involved in adopting depreciation accounting and in determining what assets, liabilities, revenues and expenses should properly be included in a system of accounts established for the purpose of reflecting rail operations and investments.

The real object of regulations covering uniform accounting, depreciation and the segregation of rail and non-rail items is to ensure that the regulatory body—in this case the Board of Transport Commissioners—has the necessary information to enable it to regulate such matters as come within its powers. The object is not, as some interests would appear to believe, to substitute the discretion of the regulatory body for that of administrative officers of the railways in administrative matters. It is important to stress this point.

B. PRESENT REGULATIONS GOVERNING RAILWAY ACCOUNTING METHODS AND STATISTICAL PROCEDURES IN CANADA

Jurisdiction over returns and reports of Canadian railways is given the Board of Transport Commissioners under Sections 379 and 380 of The Railway Act, which read as follows:

“379. Every railway, telegraph, telephone and express company and every carrier by water shall annually prepare returns, in accordance with the forms and classifications for the time being required by the Board, of its capital, traffic and working expenditure and of all other information required.

“Such returns shall be dated and signed by and attested upon the oath of the secretary, or some other chief officer of the company or carrier by water, and shall also be attested upon the oath of the president, or in his absence, of the vice-president or manager of the company or carrier by water, or shall be signed and attested by such other person or persons as the Board may direct.

“Such returns shall be made for the period beginning from the date to which the then last yearly returns made by the company or carrier by water extend, or if no such returns have been previously made, from the commencement of the operation of the railway, or other works, or undertaking, and ending with the last day of December in the year, or other interval, for which the returns are to be made, or with such other date as the Board may direct.

“A duplicate copy of such returns, dated, signed and attested in manner aforesaid, shall be forwarded by such company to the Dominion Statistician within one month after the first day of February in each year, or within one month after any other date directed by the Board under the last preceding sub-section, 1919, c. 68, s. 379.”

“380. Every railway, telegraph, telephone and express company and every carrier by water, if required by the Board so to do, shall prepare returns of its traffic monthly, that is to say, from the first to the close of the month inclusive.

"2. Such returns shall be in accordance with the forms for the time being required by the Board.

"3. A copy of such returns, signed by the officer of the company or carrier responsible for the correctness of such returns, shall be forwarded by the company or carrier to the Dominion Statistician within seven days from the day to which the said returns have been prepared.

"4. The Board may in any case extend the time within which such returns shall be forwarded. 1919, c. 68, s. 380."

In addition to the foregoing legislation, the Statistics Act, Revised in 1948, Section 25, provides in part as follows:

"... Every carrier and public utility shall annually prepare returns in such form as may be prescribed by the Governor in Council with respect to its operations."

Under Section 26 of the same Act, there is the following provision:

"... Every carrier shall prepare returns on his traffic and operations monthly."

C. SUMMARY OF PRESENT ACCOUNTING PRACTICES OF THE CANADIAN NATIONAL RAILWAYS AND THE CANADIAN PACIFIC RAILWAY COMPANY WITH PARTICULAR REFERENCE TO DEPRECIATION.

In the absence of a mandatory Canadian accounting classification, both railways adhere quite closely to the classification for Class I United States railroads issued by the Interstate Commerce Commission under the authority of the Interstate Commerce Act.

Thus the reports prepared by the railways are subject to control by the Board of Transport Commissioners. The detailed accounting records maintained by the companies are not subject to the same control, but, where deemed advisable by the Railways, are kept in accordance with the Interstate Commerce Commission classification. Therefore, while reports of the two railways are similar and it is felt that with a few exceptions accounting practices are also similar, there is no assurance that revenues and expenditures or, in fact, assets and liabilities have in all cases been treated in the same manner in the books of both companies. Consequently, there is no assurance that a comparison of the reports of the two companies results in a comparison of like with like, in so far as individual items are concerned.

The following quotations from the Submissions of the two railways are informative and interesting.

In the Brief of Canadian National Railways (Exhibit 214) the following general descriptive statement is made:

"In the absence of Canadian mandatory accounting regulations, Canadian National has voluntarily observed the classifications prescribed by the Interstate Commerce Commission for steam railroads in the United States. These classifications have as their basis the knowledge and experience in railroad accounting gained over a long period of years by railroad accounting officers and by the I.C.C."

In the Brief of Canadian National Railways there is the following statement:

"Non-Rail Operations"

In the Canadian National System non-rail operations consist of:

(a) hotel operations; and

(b) separately operated properties.

"As a generality it may be said all these operations are ancillary to the main business of the Canadian National. They are associated with and helpful to the rail-line operations. In comparison with the rail-line operations they are relatively minor in degree. The financial returns from these operations are excluded from railway operating revenues and expenditures and are reflected in separate accounts in the System income statement."

In the Submission of the Canadian Pacific Railway Company (Exhibit 139A) the outline submission of the company reads as follows:

"65. With regard to the segregation of assets between rail and non-rail operations, Canadian Pacific keeps its accounts in such a way as to enable an adequate segregation to be made except in the case of working capital, which must always be a matter of judgment. No legislation is required to enable a complete segregation to be made and Canadian Pacific supplied such material recently to the Board of Transport Commissioners."

The company goes on to outline its practices in reporting to the Board of Transport Commissioners and to the Dominion Bureau of Statistics as follows:

"Canadian Pacific accounting follows the pattern prescribed by the Interstate Commerce Commission for railroads in the United States and its railway investment and operating results are distinguishable from the corporate investment and results with only certain minor exceptions. In support of this assertion attention is drawn to the Annual Report of Canadian Pacific to the Board of Transport Commissioners and the Dominion Bureau of Statistics for the year ended December 31, 1948.

"Dealing first with the assets of the Company, there is no difficulty, for example, in finding the amount of the Railway Property Investment in the General Balance Sheet (Schedule 4A and footnote 2 in the Annual Report for 1948 of Canadian Pacific to the Board and Bureau of Statistics.) Clearly segregated on the 'Assets' side of the Balance Sheet are the items of railway, rolling stock and inland steamship properties, improvements on leased railway property and the stocks and bonds of leased railway companies. These comprise the investment, as recorded in the books of the Company, in owned and leased lines of the railway enterprise. In this connection it is important to understand that the Road Property Investment is recorded at much less than actual cost owing to the feature of 'renewal accounting' which the Company followed in regard to road property replacements for so many years. Under renewal accounting, when a unit of property is replaced the investment account is charged with the amount, if any, by which the total cost exceeds the cost to replace in kind, but it is not charged with the amount by which the cost to replace in kind might exceed the cost of the original unit. To the extent of replacements in kind, therefore, the investment account does not reflect changes in cost brought about by changes in price level and there is no way of ascertaining at this time the extent to which the investment account has been so understated short of a physical inventory of the entire property.

"Also on the 'Assets' side of the Balance Sheet, and elaborated in note 1 thereto, is the sum of the donations and grants which were used in the building of the railway, comprised mainly of those received under the terms of the original contract dated October 21, 1880.

"With regard to the stocks and bonds of leased lines which are held by the public, but which must be taken into account in order to arrive at the total 'investment in property used in transportation service', the value of such securities is shown in note 2 of the Balance Sheet.

"In the interests of economy and efficiency, the Company's treasury and much of the materials and supplies are common to both rail and non-rail operations and thus there is no readily discernible segregation between rail and non-rail of the Working Capital of the Company. The principal items of Working Capital, which represents only a relatively small part of the total investment in any event, are the Cash and Materials and Supplies but these are subject to reasonable apportionment through special study on the basis of respective requirements. Such an apportionment was recently developed by the financial and supply officers of the Company in the 20% Freight Rate Case and was accepted by the Board in its recent judgment.

"The funded debt and capital stock liabilities of the Company, as set out on Schedule 4B in the Annual Report to the Board and to the Bureau of Statistics, are not segregated between the railway enterprise and the non-railway operations, and such a segregation is not, of course, practical or even feasible except on a purely arbitrary basis.

"Proceeds from the issuance of the capital stock and other securities (apart from Equipment Obligations) have been merged in a common treasury along with all other monies which the Company constantly receives from its many diversified operations.

The Company supplied a balance sheet and profit and loss account to the Board in the 20% Freight Rate Case (Exhibit (49)-49 showing an allocation of capital and profit and loss between railway and non-railway properties.

"In summary, the Canadian Pacific investment in railway property is clearly segregated from non-railway investment on the Balance Sheet and there is supplied to the Board and the Bureau of Statistics the figure of 'Investment in Property used in Transportation Service', which is the relevant base for testing railway results. While it is true that the capital liabilities of the Company cannot feasibly be segregated as between rail and non-rail operations, no difficulty is presented because the satisfactory way of measuring permissible earning power is by fixing a fair rate of return to be earned on the railway property investment.

"66. The Company's income account provides in the first instance the net amount of earnings produced by the investment in railway transportation property and also an over-all figure of income earned from the investment in non-rail assets. Some minor items of overhead costs, such as supervision expenses and some items of income, such as bank interest, might be allocated somewhat differently but such differences are not likely to be important.

"67. Canadian Pacific submits that accounting methods and statistical procedure are not matters which lend themselves to statutory treatment but rather should be left to administrative regulation by the Board of Transport Commissioners in order that necessary flexibility may be provided."

The depreciation policies and practices of the two major Canadian railways, applicable to assets in Canada, which have been followed in the past and are now in effect, may be summarized as follows:

1. *Canadian National Railways* *Equipment*

From 1923 to 1939 Canadian National Railways followed retirement accounting.

Effective January 1st, 1940, the Company instituted a policy of depreciation accounting on a straight line basis. The original rate applied was 2.6 per cent, but additional provisions for depreciation were made of \$2 million in 1941, \$5 million in 1942, \$7½ million in 1943 and \$7 million in 1945. In 1945, Canadian National Railways applied a 3⅓ per cent rate which, it is stated, was based on the collective experience of United States roads.

Roadway Property

Canadian National Railways follows retirement accounting in respect of roadway property.

2. *Canadian Pacific Railway Company* *Equipment and Depreciable Road Property*

Prior to 1930 the Company applied renewal accounting to equipment and for the period 1930 to 1939 applied retirement accounting to such assets.

In 1940 the Company adopted depreciation accounting for equipment on a user basis and in 1942 adopted depreciation accounting for depreciable road property on a user basis.

Prior to the adoption of depreciation accounting for road property, the Company had followed renewal accounting in respect to such assets.

D. PRINCIPAL DIFFERENCES BETWEEN CANADIAN NATIONAL RAILWAYS AND CANADIAN PACIFIC RAILWAY COMPANY

The principal differences in the accounting policies and practices of the two railways are as follows:

(1) Canadian National follows depreciation accounting for equipment on the straight line method.

Canadian Pacific follows depreciation accounting for equipment on the user basis.

Canadian National has not adopted depreciation accounting for roadway property in Canada.

Canadian Pacific has done so on a user basis for depreciable roadway property.

(2) Canadian National operates its express service as a department of the railway.

Canadian Pacific recognizes the separate identity of its subsidiary express company.

(3) Canadian National operates its telegraph service as a department of the railway and includes its revenues and expenses in railway operating figures.

Canadian Pacific operates its telegraph service as a separate department of the company and carries the net profit thereon to its general profit and loss account.

(4) Canadian National accounts are published on a consolidated basis. Canadian Pacific accounts are those of a parent company.

(5) The published income statements of the two railways differ in their form and terminology.

In the Submission of the Canadian Pacific Railway Company is the following statement:

"58. The significant variation in accounting practice between Canadian National and Canadian Pacific is in regard to depreciation practices. Canadian Pacific follows depreciation accounting for all depreciable assets, as is prescribed for United States roads. Accruals for depreciable road properties and railway rolling stock are made on the 'user basis'. The annual depreciation charges are developed as a product of the user rates and the use factor. In the case of rolling stock the use factor is the run-out mileage of the various classes of equipment and in the case of road property is the gross ton mileage. Both of these use factors are appropriate measures of the use made of rolling stock and road property respectively. Unimportant exceptions are made in the cases of inland steamships and of work equipment where the straight line basis is used."

An examination of the submissions made and of the evidence given and of the arguments of Counsel seems to show that the first sentence in the foregoing statement is justified, namely:

"The significant variation in accounting practice between Canadian National and Canadian Pacific is in regard to depreciation practices."

It would also appear that, except in the case of depreciation accounting, the differences in accounting policies and practices of the two railways are not likely to prove serious obstacles to uniformity.

E. PRINCIPAL DIFFERENCES IN ACCOUNTING PRACTICES AND POLICIES BETWEEN THE TWO LARGE CANADIAN RAILWAYS AND CLASS I UNITED STATES ROADS

As stated previously, the accounting practices of the two major Canadian railways in respect of Canadian operations follow closely the accounting practices prescribed by the Interstate Commerce Commission. The principal differences may be summarized as follows:

(1) The Canadian National Railways and the Canadian Pacific Railway Company do not keep their accounts in such a manner as to reveal operating profits or losses on passenger services, whereas this is the practice in the United States.

(2) The Canadian National Railways provides for retirement of depreciable road properties of its Canadian lines by a charge to expense at the time of its retirement, whereas in the United States the standard practice is to provide for such retirements by annual depreciation accruals based on the straight line method.

(3) The Canadian Pacific Railway Company provides for retirement of its equipment and depreciable road properties by means of annual depreciation accruals based on the user method, whereas the standard practice in the United States is to base accruals in this respect on the straight line method.

(4) Canadian National Railways publishes its accounts on a consolidated basis, whereas in the United States this is not a common practice.

(5) The Interstate Commerce Commission Uniform System of Accounts for Steam Railroads provides that when a railway company transacts an express business through its regular railway organization the revenues therefrom and the expenses thereof shall be accounted for through the primary revenue and expense accounts provided for that purpose.

Canadian National Railways adheres to this principle. The Canadian Pacific Railway Company operates its express business through a subsidiary company.

(6) With respect to commercial telegraphs, the Interstate Commerce Commission requires that when a railway company conducts a commercial telegraph business its revenues and expenses shall be included in the primary revenue and expense accounts of the railway.

Canadian National Railways follows this practice, whereas the Canadian Pacific Railway does not.

The large American railroads do not conduct telegraph or express operations. Therefore, the Canadian Pacific Railway Company's procedure may be more comparable to American practice in regard to such operations than that of the Canadian National Railways. This may appear to be anomalous, but in any event it is not a matter of great consequence.

F. MEANING OF UNIFORM ACCOUNTING, DEPRECIATION ACCOUNTING AND THE SEGREGATION OF RAIL AND NON-RAIL ITEMS

During the hearings, it became apparent that there might be some difference of opinion as to the meaning of these terms of the Order in Council. It would seem, however, that the terms uniform accounting, depreciation accounting and segregation of rail and non-rail items may be defined or described as follows:

Uniform accounting methods and statistical procedures may be described as those methods and procedures which will provide for the recording and reporting of similar expenditures, revenues, assets and liabilities and other data by the various carriers in a similar manner. It is a system of accounts and reports which will permit of comparison of the accounts and reports of any one company with those of another company, with the assurance and knowledge that items of a similar nature have been recorded by all companies under accounts bearing the same name and reported by all companies in a similar manner.

There have been many definitions of depreciation and depreciation accounting propounded during the past years. One which has had general acceptance with the accountants and which was used in the recent rate cases before the Board of Transport Commissioners without being challenged is the

definition issued by the Committee on Accounting Procedure of the American Institute of Accountants in its Bulletin No. 22, dated May 1944, and which reads as follows:

"Depreciation accounting is a system of accounting which aims to distribute the cost or other basic value of tangible capital assets, less salvage (if any), over the estimated useful life of the unit (which may be a group of assets) in a systematic and rational manner. It is a process of allocation, not of valuation. Depreciation for the year is the portion of the total charge under such a system that is allocated to the year. Although the allocation may properly take into account occurrences during the year, it is not intended to be a measurement of the effect of all such occurrences."

In the "Report of Committee on Depreciation to the National Association of Railroad and Utilities Commissioners 1943", there are the following statements regarding depreciation and depreciation accounting on page xiv of the summary of that report:

"The significance of the depreciation phenomenon may be described as follows:

- (a) Depreciation is the expiration or consumption, in whole or in part, of the service life, capacity, or utility of property resulting from the action of one or more of the forces operating to bring about the retirement of such property from service;
- (b) The forces so operating include wear and tear, decay, action of the elements, inadequacy, obsolescence, and public requirements;
- (c) Depreciation results in a cost of service.

"Depreciation accounting is the process of charging the book cost of depreciable property to operations over its life."

The purpose of depreciation accounting may be said to be:

- (a) To provide a reasonable or fair allocation of the cost of an asset, subject to depreciation, against each accounting period;
- (b) To provide for the recovery of the cost of the asset subject to depreciation on the exhaustion of its useful life.

By the segregation of rail and non-rail items is meant the classification or grouping of assets, revenues and expenses relating to railway operations so that the amount invested in railway property is clearly disclosed at all times and the results of the operations of railway property are also disclosed in a clear and authoritative form.

Such a classification or segregation will not be generally acceptable to interested parties unless it is carried out under the instructions and inspection of an independent regulatory body. Uniform accounting regulations for railway accounts necessarily involve an appropriate segregation or grouping of rail and non-rail items.

G. PROPOSALS AND SUGGESTIONS

The following are some of the statements which have been made in submissions to the Commission and which serve to outline the views generally held on the subjects of uniform accounting regulations, segregation of rail and non-rail items and depreciation accounting.

1. *Uniform Accounting and Segregation of Rail and Non-Rail Items* *Canadian National Railways*

In the Canadian National Railways brief, the following statement is made:

"Canadian National is a state-owned enterprise. It is owned by the people of Canada and its affairs are a matter of public interest. It is highly desirable that the accounting presentation of its financial position and the results of its operations should be made according to accepted standards. A management subject to accountability should not itself decide the accounting rules by which the results of its management are to be judged."

The Canadian National Railways also submits that there should be uniformity between the accounting regulations of Canadian railways and those of United States roads. In support of this contention it points out that it operates extensive lines in the United States in respect of which it must follow the American classifications as prescribed by the Interstate Commerce Commission. The accounts of these lines are included in the System accounts of the Canadian National Railways and any variation in accounting classifications would add to the accounting problems of the Canadian National Railways.

The Canadian National Railways emphasizes the advantages and benefits which would accrue to a Canadian regulatory body and the Canadian railways if the Interstate Commerce Commission classifications were adopted.

The Canadian National Railways suggests that the smaller railways in Canada should not be burdened with a too elaborate accounting system and might use the Interstate Commerce Commission condensed classification. There is general agreement that small railways not operated or controlled by the two main systems should not be required to follow a classification designed for the large railways. The chief point of importance is that uniformity between the two major systems should exist.

Canadian Pacific Railway Company

In the Canadian Pacific Railway Submission is the following statement indicating certain differences between the situation in Canada and the United States:

"Canadian railway accounting has largely followed the pattern established in the United States. The Interstate Commerce Commission found it necessary to place particular emphasis on measures for achieving uniformity in railroad accounting due to certain distinctive conditions, not paralleled in the Canadian situation.

"For instance, the Interstate Commerce Commission, in 1900, had jurisdiction over 1,224 railroads operating 192,556 miles of main track and, at the end of 1947, 502 railroads operating 238,209 miles of track. In these circumstances, it was essential to the Commission's exercise of its functions that uniformity be sought in the periodic submissions of data by the many railroads under its jurisdiction.

"In Canada, however, out of 42,322 miles of main track at December 31, 1947, 38,764 miles, or over 90% of the total, were represented in the two great transcontinental roads—the Canadian Pacific and Canadian National."

The following statement also appears:

"Although the degree of uniformity in accounting procedure of Canadian railways is substantial, permitting certain general comparison of their results one with another and with those of United States roads, nevertheless the extent of comparability between the two major Canadian roads and between Canadian and United States roads is limited."

The Brief of the Company also explains the reasons for the views of the Canadian Pacific Railway Company on this lack of comparability. The Canadian Pacific Railway Company submits that some of these differences are of such a fundamental nature that they cannot be overcome by uniform accounting treatment.

Province of Alberta

The Province of Alberta makes the following statements on accounting and statistical procedures:

"The Province of Alberta submits that your Commission should recommend that a standard system of accounts be adopted by the railways of Canada."

"It is not here suggested that such uniform results are necessarily used for the purpose of determining freight rates or passenger rates. The object of stressing the necessity for a uniform classification of accounts is that the financial statements may truly reflect the correct operating conditions and the financial position generally."

"In the Submission of the Province of Alberta there is definite need for the prescription of uniform accounts by the regulatory body, i.e. the Board of Transport Commissioners, and for the continuous supervision of those accounts by the regulatory body. In our submission, therefore, the Commission should recommend that the Board of Transport Commissioners be empowered by statute to promulgate a uniform system of accounts for Steam Railways in Canada, generally along the lines of the accounting classifications prescribed for United States railroads by the Interstate Commerce Commission. In our submission the differences which the Canadian Pacific in its Outline Brief calls to the attention of the Commission should not be regarded as being sufficiently important to prevent the inauguration and functioning of a uniform system of accounts."

"We further submit however that by statutory provision the Transport Board should be authorized and directed to:

- "(1) make a segregation of rail and non-rail activities of each carrier;
- "(2) require the carriers to keep their respective accounts accordingly;
- "(3) require the railways to properly apportion between rail and non-rail all charges which are common to rail and non-rail operations;
- "(4) require the railways to submit their financial statements in accordance with such segregation."

Province of British Columbia

The following statements are made on behalf of the Province of British Columbia:

"The principal recommendation in this field which the Province of British Columbia desires to stress is the advisability of the adoption of uniform accounting regulations for Canadian railways."

"The accounting regulations should make provision for the detailed classification of all items which comprise the assets and liabilities of Companies engaged in the provision of rail transportation in Canada whose activities fall within the orbit of the Board of Transport Commissioners. The classification should provide for the complete segregation of assets and liabilities employed in the furnishing of rail service from all other assets and liabilities of the Company. We will have certain recommendations to place before the Commission regarding this particular phase in a later portion of this Brief. The assets employed in the provision of rail service should be segregated in such detail as is practicable with a minimum requirement of showing each category of depreciable and non-depreciable property separately."

Province of Saskatchewan

The Province of Saskatchewan makes the following statements:

"It is suggested, therefore, that there be prescribed by the Board of Transport Commissioners a uniform system of accounts fully detailed as to the content of each account and giving particular attention to the separation as between what is operating cost and what is capital. It is further suggested that there be prescribed a uniform policy as to provisions for retirement of plant. The Board should have the right of inspection, by its technical staff, of the accounting and statistical records maintained by the railway. A standard form of annual report to the regulatory body fully detailed as to all necessary statistical and accounting information and available to the public which pays the rates, should be in existence. There should be tests of maintenance and expense levels as to normality. The results to be achieved from the adoption of the foregoing would mean uniformity of accounts from year to year as between the different companies under regulation. It would also mean uniformity of interpretation through periodic rulings of the regulatory body. It would mean that the rules of the Board were being followed. It would also mean a standard policy of provision for retirement co-ordinated with the maintenance policy with which it must be integrated."

"The Government of Saskatchewan wishes to point out most emphatically that the above suggestions are made on the assumption that subsidiary ventures such as the hotels and the mining investments of the Canadian Pacific Railway will be considered as railway investments for the purposes of rate making, and that the accounting practices of these subsidiaries will be subject to the scrutiny of the Board. The Cana-

dian Pacific Railway was incorporated and sponsored for the purpose of providing transportation to the Canadian people and their investments should be treated accordingly."

Saskatchewan is the only province that has expressed the view that all "subsidiary ventures" of the Canadian Pacific Railway Company should be taken into account and considered as railway investments for the purposes of rate making.

Province of Nova Scotia

The Province of Nova Scotia makes the following statement:

"With respect to accounting methods of railways in Canada, it is submitted that in order to appraise the operating results of the railway in any year or to compare the results over a period of years, it is imperative that annual statements should be compiled on a uniform basis. It is urged that to bring this about the Board of Transport Commissioners prescribe a uniform standard classification of accounts which the railways should be required to follow in preparing their records and financial statements."

The Province of Nova Scotia enumerates as follows those points which it believes should receive special attention in dealing with uniform accounting and the segregation of accounts:

- "1. Definite and detailed rules should be laid down as to what constitutes proper charges to the operating accounts under the classification of maintenance.
- "2. The method of computing depreciation should be determined and the rates prescribed for all classes of assets.
- "3. Rules for the segregation of accounts should be laid down, clearly setting out what constitutes rail as opposed to non-rail enterprises.
- "4. Rules for the allocation and apportionment of charges common to both rail and non-rail enterprises should be prescribed by the Board."

Province of Manitoba

The Province of Manitoba describes the first requirement of a uniform system of accounts as follows:

"The first requirement of such a system of prescribed accounts is that there should be a clear definition of the activities which are to be covered by it. It is the view of the Manitoba Government that this system should cover all rail activities of the Canadian railways. The term 'rail' as used here should extend to the point where it will cover revenues and expenditures, both current and capital for all those activities which are to be taken into account in determining the level of freight and passenger rates in Canada. The particular division which should be made here has been described previously and needs no further elaboration at this point."

The Province of Manitoba makes the following suggestions with respect to the annual reports to be made by the railways to the Board of Transport Commissioners and to the Dominion Bureau of Statistics:

"Our suggestions with respect to the Annual Reports by the railways to the Board and to the Dominion Bureau of Statistics, are that they should:

1. Reveal as fully as possible the results of railway operations during the period under the standard accounting system prescribed by primary accounts;
2. Reveal changes in the different asset accounts during the period, and in the related reserve accounts;
3. Reveal operating revenues, operating expenses and investment, in the major regions of Canada and the formulas which have been used to allocate those items which are not directly attributable to the service in any one region;
4. Include a Balance Sheet segregating rail and non-rail assets and their related reserve accounts;

5. Include the data necessary to a more detailed study of traffic statistics particularly with respect to the volume of traffic moving under the various types of rates;
6. Include the data necessary to a study of the relative level of rates in the major areas of Canada;
7. Include an annual inventory of assets in service, classified in such a manner as to reveal the number of years the various assets have been in service;
8. Include a statement showing wherever possible, statistics of physical units such as rail placed, ties placed, man-hours of work performed, etc., in total and segregated between that chargeable to maintenance and that chargeable to capital.

"Our final suggestion in this regard is that there should also be a system of monthly reports in a more condensed and less detailed form, covering those records for which monthly figures are relevant. Wherever monthly reports are provided they should follow the same pattern as the annual reports."

2. Depreciation

Canadian National Railways

The Canadian National Railways outlined its objections to any change in the depreciation policies of that Company. These may be summarized as follows:

- (a) Canadian National Railways has no inventory of its railroad property and any adequate valuation of the property which might be subject to depreciation would be a most lengthy and expensive task.
- (b) Canadian National Railways submits that the present practice in the United States as regards roadway property is illogical as depreciation accounting is not applied to the track structure.
- (c) Canadian National Railways suggests that for over forty years, United States railroads were generally opposed to depreciation accounting for roadway property and the reason for their changed attitude had largely to do with income tax relief which could be obtained. Canadian National of course has no income tax liability.
- (d) Canadian National Railways suggests that doubtless depreciation policies and reserves affect the credit or the market value of railway securities but that this is not the case with the Canadian National Railways as "the value of its obligations rests upon the guarantee of Canada and the balance sheet of the Railways is of no consequence, market-wise."
- (e) Canadian National Railways contends that under depreciation accounting, management does not see from the prescribed form of accounts the actual cash expenditures during the year.
- (f) Canadian National Railways maintains that "a tremendous amount of accounting would be required without any offset advantage in setting up depreciation of small units of property . . ."

Canadian National Railways suggests that there is probably something in favour of depreciation accounting in respect of a small road but, having regard to the size of the Company, its physical characteristics and the varying dates of the installation and the different service lives, a combined retirement and renewal basis best reflects the real expense of the year.

It makes the following statement with reference to roadway property:

"Canadian National consideration of this subject has led it to the conclusion that depreciation accounting, as applied to roadway property, should not be made mandatory. It considers as illogical the contention that depreciation accounting is essential to determine the true cost of maintenance, so long as the track structure is excepted. The adoption of depreciation accounting would not aid management in the control of maintenance expenditures; it would entail considerable accounting expense and its effect on the total operating expenses would be relatively quite small. But whatever arguments there may be, either for or against, Canadian National submits that its adoption is an impossibility until there is available an inventory of property units and a determination of their costs."

Canadian National Railways expressed the view that there should not be depreciation accounting for roadway property and that rolling stock should be depreciated on the straight line method and that this procedure should be made compulsory for both railways.

Canadian Pacific Railway Company

In the submission of the Canadian Pacific Railway Company are the following statements setting forth in concise form the Company's views on the advantages to the users of the railway service as well as to the Company of the user system of depreciation.

"60. One of the principal objects of a depreciation system is to charge currently against income an appropriate proportion of the cost of property and equipment used in producing transportation service. The user method, by directly relating the depreciation charge to the use made of the property and equipment, achieves this object. The resulting net income in periods both of high and low traffic volume is in the opinion of Canadian Pacific more realistically stated than if the straight line method were used."

"61. The user basis of depreciation is particularly suitable for railway operations because the volume of railway traffic and accordingly the use of railway property fluctuates more violently than in the case of other public utilities. Appropriate statistical measures of the use of railway equipment and property are available. This method has substantial advantages not only to the railway company but also to the users of railway service and tends towards a stabilization of railway employment."

There was general agreement on the part of the witnesses for the Company that the Board of Transport Commissioners should have jurisdiction over depreciation in so far as such charges affected rates. One witness for the Company expressed the opinion that the railways should be left free to choose their own methods of depreciation but agreed that the Board of Transport Commissioners should have power to determine the classes of assets to be made subject to depreciation accounting and the rates to be applied thereto. Another witness appearing for the Company expressed the view that the carriers should have freedom to select whatever method of depreciation they wished for corporate purposes but that one system should be prescribed for all carriers for rate-making purposes.

The Company has made a strong case for the merits of the user system through its written submissions, the evidence of expert witnesses, other cases brought forward, and in the arguments of Counsel.

Province of Manitoba

The Province of Manitoba gives a most complete statement and comment on the subject of depreciation. Its comments and recommendations are either repeated or endorsed by several of the other provinces making submissions on the subject. Following are the recommendations of Manitoba:

"For the sake of clarity, it seems advisable to list our recommendations at this point and then to develop each of them in some detail. On the question of accounting provisions for plant retirement, the Manitoba Government feels that your Commission should make the following recommendations:

1. That The Railway Act should be amended in such a way that it is made clear that the authority and responsibility for setting the retirement and renewal practices to be used for rate making, lies in the hands of the Board of Transport Commissioners and not in the hands of any interested parties, either the railways or the users of the service.
2. That the Board of Transport Commissioners should have the authority and the responsibility for determining which assets are to be treated on the basis of retiral accounting or of renewal accounting or of depreciation accounting.

3. That the Board of Transport Commissioners should undertake its own independent studies of service life of those assets which are to be handled on the basis of depreciation accounting.
4. That in dealing with those assets which are to be handled on the basis of depreciation accounting, the service life data should be calculated in terms of years rather than in terms of units of mileage or traffic volume. In other words, that the depreciation, where it is used, should be calculated on a straight line basis rather than on the present user system.
5. That the Board of Transport Commissioners should establish the necessary administrative machinery for maintaining a continuous review of all the above decisions."

Throughout that section of Manitoba's Brief dealing with depreciation, it is urged that the straight line method of depreciation accounting be used.

Manitoba's criticism of the user basis of depreciation is not directed at any attempt to recover the cost of capital assets from the users of the service, but arises from the fact that the amounts set aside in recent years have been too large and if continued on the same basis "the users of the service will be called upon to pay the full cost of the assets and a rather substantial sum in addition."

Manitoba agrees that the user system may have merit from the point of view of corporate operations and business management but that, in the opinion of Manitoba, there are no adequate records available to check the fairness of the user rates and that, therefore, the user system should be rejected for rate-making purposes.

Province of Nova Scotia

The Submission of the Government of the Province of Nova Scotia confines itself to the following general remarks on depreciation:

"The method of computing depreciation should be determined and the rates prescribed for all classes of assets."

Province of Alberta

The Province of Alberta makes the following statements:

"An extended Submission is being made by the Province of Manitoba with regard to depreciation accounting and we associate ourselves with the views expressed therein."

"The submission of the Province of Alberta is that the straight line method of depreciation should be adopted because it accurately reflects the annual depreciation if the lifetime of the asset is correctly estimated and it is a method relatively simple to administer. On the other hand, it is agreed that the user method of depreciation has merit where the incidence of use fluctuates as it does in railway operations. Should, however, the user method be recommended for adoption in Canada we would stress the need of the regulatory authority setting forth definite requirements concerning the information necessary to be supplied in order to determine the basic rate."

Province of British Columbia

The Province of British Columbia makes the following statement:

"In advocating uniform accounting under statutory authority we include the submission that the basis of depreciation or provision for retirement of assets be uniform in respect of all Canadian Railways and that the adoption of a uniform method of depreciation by all railways should be strictly enforced.

"We recommend that the regulatory body should require that the method of accounting for depreciation on all depreciable assets should be on a depreciation accounting straight line basis, similar to the basis presently required by the Interstate Commerce Commission.

"In our submission we have already intimated that while we have a definite preference towards straight line depreciation, the paramount consideration is that the

regulatory body should perscribe the method of depreciation to be followed after having satisfied itself as to the propriety of the rates involved, whether on a straight line or user basis."

H. ADVANTAGES AND DESIRABILITY OF UNIFORMITY IN REGULATIONS RELATING TO ACCOUNTING, DEPRECIATION PRACTICES AND THE SEGREGATION OF RAIL AND NON-RAIL ITEMS

Prior to the recent freight rate cases before the Board of Transport commissioners, it would not appear as if uniformity or the lack of uniformity in such matters as accounting and depreciation practices and the segregation of rail and non-rail items had caused much concern. However, an examination of the records in those cases and in particular the case arising out of the application of the Railway Association, dated 9th November 1946, and the supplementary application dated 12th December 1946, shows that a great deal of the time of the hearings was devoted to a discussion of the contents of various accounts and the propriety (for rate purposes) of the policies and practices followed by the railways in recording and reporting revenues, expenses, assets and liabilities.

While it would not appear necessary to quote at length from the records of the freight rate cases to show the difficulties encountered by the Board in endeavouring to distinguish between rail and non-rail items, the following quotations from the Judgment of the Board of Transport Commissioners for Canada, dated 30th March, 1948, will serve to outline some of the problems encountered as a result of the lack of uniformity in regulations relating to accounting practices, depreciation procedures and the segregation of rail and non-rail items:

"The Hon. Mr. Ralston, counsel for the Transportation Commission of the Maritime Board of Trade and the Maritime Provinces, contends that income tax should be excluded entirely from the operating expenses of the railways. With this view I am unable to agree. Income tax payable in respect to railway operating income is, I think, properly chargeable to railway operating expenses.

"For the Company it is also contended that it is impossible to segregate the income tax into two component parts, viz that portion derived from railway operations income as against that portion derived from ancillary services and investments and referred to as 'Other Income'. I am satisfied, however, that such a segregation could be made.

"As will be seen from the foregoing the whole enterprise of the Canadian Pacific Railway Company is somewhat closely integrated. And for this reason I have found considerable difficulty in appreciating the true situation of the company in respect to its railway operations.

"It may be that some part of the fixed charges of the Canadian Pacific are attributable to non-transportation enterprises. But because of the close relationship of railway transportation and other enterprises of the Company I have not been able to calculate with any degree of satisfaction what the amount, if any, may be.

"The question arises as to how long deferred maintenance may appropriately continue to be deferred. This question I am unable to answer on what is before us.

"Counsel for the respondents submitted that the Canadian Pacific Railway should have drawn upon their deferred maintenance reserve to some extent for maintenance of way and structures in 1947, and that its expenses for such purpose should be reduced accordingly. This I am not disposed to do.

"In making comparisons between Canadian Railways and United States Class I Roads some regard should be had to possible differences in conditions under which the respective Railways operate. The making of accurate comparisons between the Canadian Pacific Railway and Canadian National Railways is also difficult because of the lack of a uniform system of accounting and practices for Canadian Railways. This is a subject which, I think, should have further consideration at another time."

If the railway accounts had been prepared in accordance with uniform regulations in respect of accounting matters generally and depreciation procedures and the segregation of rail and non-rail items in particular, many of the problems

and difficulties referred to in the foregoing quotations would have been minimized, if not completely eliminated, and the time required for hearings correspondingly reduced. This in itself would seem to warrant the adoption of uniform regulations for such matters.

The views of all concerned, as an examination of the record will indicate, are almost unanimous in support of the desirability of uniform regulations in accounting procedures. There are, as will be seen, particularly from the Submissions of the railways, certain differences of opinion as to the degree of uniformity which can be achieved but it has not been suggested at any time that differences of that character are of importance as compared to the major advantages to be gained from the adoption of uniform regulations.

If uniform regulations are adopted relating to accounting matters, depreciation practices and the segregation of rail and non-rail items, the Board of Transport Commissioners will have available the necessary information to enable it to regulate such matters as come within its powers. In particular, as stated in the foregoing, it would eliminate much, if not all, of the time and argument now devoted to a discussion of the contents of the railway accounts and statements.

Uniform reports and accounts would assist the shippers and the public at large in forming a better opinion as to the results of the operations of the two great Canadian railways and in making comparisons, if they so desire, between the operations of those railways, and of the Canadian railways with the American roads, provided, of course, in this latter instance that the Canadian system of accounts is substantially comparable to that followed by the American railroads.

If there are any serious disadvantages which would arise out of the adoption of uniform regulations relating to accounting matters, depreciation practices and the segregation of rail and non-rail items, they have not been brought to light in the discussions before this Commission. Each railway has indicated that it would strongly object to any change in the depreciation policies it now follows. It has also been pointed out that, if the adoption of uniform regulations resulted in certain changes in accounting procedures, it would probably have the effect of distorting comparisons with prior years. These objections do not seem to be sufficiently serious to deserve much weight in a consideration of the matter when the major advantages to be gained from the adoption of such a system are taken into account.

I. CONCLUSIONS

After a consideration of the evidence and the arguments, the following conclusions have been arrived at:

- (1) That uniform accounting regulations, depreciation procedures and the segregation of rail and non-rail items are all inter-related and all have as their object the production of adequate and reliable information for management, regulatory authorities and others interested in rail operations and investments.
- (2) That the railways and the provinces appear to agree in principle on the desirability of uniform regulations governing accounting procedures, depreciation practices and the segregation of rail and non-rail items. As a rule any attempt by the state to extend regulatory controls is resisted by the interests affected. It is perhaps significant that no objection has been raised by the parties concerned as regards the desirability of a uniform code of accounts to be established under the authority of the Board of Transport Commissioners. The only question that has been raised is the degree of uniformity that is practicable and desirable. This is an administrative problem rather than one of principle and has not been taken into consideration here.

- (3) The two railways and all the Provinces, with the exception of the Province of Saskatchewan, seem to attach importance to having rail and non-rail items segregated on a uniform and consistent basis and all the Provinces agree that the Board of Transport Commissioners should have the power to determine what items shall be classed as rail and what as non-rail. While the absence of a clear-cut segregation of rail and non-rail items in the past has resulted in inadequate information being available for the consideration of rate applications, it has been stated by the Board of Transport Commissioners that in the case of the Canadian Pacific Railway Company the merging of revenues from rail and non-rail activities in a common treasury and the use of all surplus funds for rails operations, has been beneficial to the railway company and to the users of its service. This view appears to be sound and nothing heretofore said regarding segregation of assets is intended to mean that the Canadian Pacific Company should be in any manner restrained in the use of all funds at its disposal for railway purposes.
- (4) It would seem clear that there is complete agreement that regulations governing uniform accounting, depreciation practices and the segregation of rail and non-rail items should not be set out in a statute but that appropriate powers should be conferred on the Board of Transport Commissioners, instructing it to promulgate the necessary regulations and to supervise their execution.
- (5) It would appear that much useful work was done by the committee appointed in February 1939 by the Right Hon. C. D. Howe, then Minister of Transport, to consider a uniform classification of accounts for Canadian railways. The work of this committee should prove a useful groundwork for a further detailed consideration of the problem. Undoubtedly the Board of Transport Commissioners will want to discuss with railway management any classification of accounts, code of depreciation policies and segregation of rail and non-rail items, but the important point is that uniformity is desirable and the Board must be given the express power and direction to bring about the uniformity regardless of whether or not the two major railways agree, and this uniformity should be brought about with utmost despatch.
- (6) The Interstate Commerce Commission classification is followed in large measure and the advantage of using that classification has been stressed in Provincial submissions. It would appear that there are sufficiently important differences between the situation in Canada and the United States to warrant a careful scrutiny of all accounts to determine whether some variation from the said classification may not be necessary and desirable.
- (7) All the discussions on the subject of uniform accounting, depreciation and the segregation of rail and non-rail items have had reference to the accounts of the Canadian National Railways and the Canadian Pacific Railway Company. If a uniform classification of accounts is adopted, it would seem obvious that the principle of such a classification should be applied to the smaller roads, but it is suggested that a simplified classification would serve both the purpose of the railways and the needs of the Board of Transport Commissioners.
- (8) It should be remembered that uniform classifications, uniform depreciation regulations and the segregation of rail and non-rail items on a uniform basis will not result in similarity in all cases. However, uniform regulations should serve to bring out differences between the railways and eliminate some of the confusion which now exists when comparisons are made.

- (9)(a) Any system of depreciation which distributes the cost of the asset over the estimated useful life in a rational or systematic manner is worthy of consideration.
- (b) While from the point of view of management there is merit in the user system of depreciation under which the charges fluctuate in accordance with revenues as do most of the expenses of the railways, the evidence indicates that the user basis presents serious problems to a regulatory body in its application and supervision.
- (c) Notwithstanding the merits of other systems the straight line method of depreciation would appear preferable for rate making purposes and is generally used by regulatory bodies because it is easier to apply and check than any of the other recognized methods.
- (d) It is recognized that the absence of detailed investment figures relating to the Canadian National Railways roadway property might render the application of depreciation accounting difficult. However, it would not seem as if the difficulties stemming from this situation should be permitted to stand in the way of uniform accounting if it is deemed desirable to apply depreciation to roadway property.
- (10) The regulation of accounts requires first, the adoption of uniform terminology for all rail accounts, together with detailed instructions as to the items to be charged or credited to each account; and second, a system of supervision to ensure that the instructions of the regulatory body are being carried out.
- (11) Regulation and supervision of rail accounting and statistics is essential to the effective regulation of rates and tolls. Effective rate regulation should rest on factual information compiled in a uniform manner from the carriers' records. Informed action on the applications for rate changes is possible only when reliable operating data are available. It appears that present statistical reports as prepared by the railways are inadequate for the purposes of the Board. Sections 379 and 380 of the Railway Act do not appear to give the Board sufficient authority over the production of the statistics which it should have for the performance of its duties.
- (12) Many of the complaints which had been levelled at railway statistics have arisen from the lack of certainty that particular accounts and operating figures of one railway could properly be compared with those of another railway or with the figures for previous years of the same railway, even when the items which it is sought to compare have been reported under similar headings and on similar forms. These complaints would appear to have some foundation and, as has been stated in respect to uniform accounting, constitute an important argument in favour of the adoption of a uniform code of accounts. The adoption of uniform accounting practices under the supervision of the Board of Transport Commissioners will remove the uncertainties which have existed in the past and will serve to reveal differences which may require special consideration by those using the reports.

Statistical and financial reports covering the railways' operations and "necessary to a full disclosure of all facts relevant to the determination of the level of freight rates to be charged in Canada" should be designed by the Board of Transport Commissioners primarily with a view to ensuring that the Board has the necessary information to enable it to regulate such matters as come within its powers.

J. RECOMMENDATIONS

It is accordingly recommended:

That the Railway Act be amended so that the Board of Transport Commissioners shall:

- (a) Be empowered and directed to prescribe as soon as practicable a uniform classification and system of accounts and reports for rail items for the Canadian National and Canadian Pacific railways. Such classification and system of accounts and reports to distinguish clearly between rail and non-rail items. Since each of these companies not only owns certain railways but controls, leases and operates other railways, the question will arise whether some of the smaller roads in this category should be compelled to adopt such classification. This is a matter of detail which the Board will be in a position to decide. The point to be stressed is that the uniformity must be such that comparisons of operations between the two major systems may be readily made.
- (b) Be empowered to prescribe a simplified classification of such accounts and reports for railways (other than the Canadian National and Canadian Pacific railways) subject to the jurisdiction of the Board.
- (c) Be empowered and directed to prescribe as soon as practicable for all railways subject to its jurisdiction the classes of property for which depreciation may properly be charged in the rail accounts, and the rate or rates to be charged with respect to each class. Whatever system and whatever rates of depreciation are approved by the Board should be accepted for income tax purposes, because it might be said to be unfair to have depreciation charges approved by a regulatory body such as the Board and then disallowed in determining income tax liability.
- (d) Be empowered to carry out such inspection and examination of the accounts of the railways as the Board deems necessary.
- (e) Be empowered and directed to institute and maintain a statistical procedure so designed as to provide the requisite data necessary to the performance of its duties.

CHAPTER VIII

CANADIAN NATIONAL - CANADIAN PACIFIC ACT

Paragraph 2(e) of Order in Council P.C. 6033 directed the Commission to:

“(e) Review and report on the results achieved under the Canadian National-Canadian Pacific Act, 1933, and amendments thereto, making such recommendations as the present situation warrants.”

The above was included as a term of reference for this Commission presumably because of representations made by the provinces to the Federal Government (which have been referred to earlier in this Report) and because of lack of authority of the Board of Transport Commissioners under the Canadian National-Canadian Pacific Act. The Board in its decision¹ of March 30, 1948, authorizing a 21% increase, stated that the Canadian National-Canadian Pacific Act “does not confer upon the Board any duty or authority to require the railways to study and undertake any co-operative measures with a view to effecting economies or to review and investigate what measures they have taken or might have been taken under such Act”—an opinion upheld in the review Decision handed down by the Board on September 20, 1949.²

A. HISTORICAL BACKGROUND

With the onset of the depression in 1929 railway traffic in Canada declined sharply and the financial position of both major railways became so serious that the Government of Canada in 1931 appointed a Royal Commission for the purpose of inquiring “into the whole problem of transportation in Canada, particularly in relation to railways, shipping and communication facilities therein, having regard to present conditions and the probable future developments of the country, and report their conclusions and make such recommendations as they think proper.” The Order in Council³ setting up the Royal Commission of 1931-32 and outlining the reasons for its appointment stated in part as follows:

“Having regard to the vital importance of transportation to the trade and commerce of Canada, the serious and continuing deficits of the Canadian National Railways System, and the diminished revenues of the Canadian Pacific Railway system, conditions which have been brought about in part by duplication of tracks, facilities and services of every kind and in part by competition by other modes of transportation, particularly motor vehicles operating on highways, the Ministers concur with the proposal that the whole subject be studied by Commissioners with the powers hereinafter set forth.”

Following hearings throughout Canada the Commission presided over by Sir Lyman P. Duff reported to the Government in September, 1932. The Report⁴ made several references to duplication of services and consequent uneconomic use of transportation facilities and dealt at length with the need for co-operative measures between the two major railway systems.

Following the Report the Canadian National-Canadian Pacific Act was introduced in the Senate as Bill “A” and was assented to and became law on May 23, 1933.

In the years which followed the passage of the Act and while the depression continued there were joint co-operative measures instituted by the two railways.

¹ 62 C.R.C. 1.

² 64 C.R.C. 1.

³ Order in Council P.C. 2910, November 20, 1931.

⁴ Report of the Royal Commission to inquire into Railways and Transportation in Canada, 1931-32.

The plight of the railways, however, was still serious and there was much discussion throughout the country about amalgamation and considerable agitation (chiefly by the Canadian Pacific Railway) for unification of the two systems.

The first major review of the results achieved under the Canadian National-Canadian Pacific Act took place in 1938-39, when a Special Committee of the Senate was appointed to inquire into and report upon the best means of relieving the country of its extremely serious railway condition and the financial burden incidental thereto. It sat during 1938 and the early part of 1939 and in the course of its inquiry dealt with the co-operation achieved under the Act.

The final report brought down on May 11, 1939, rejected the unification proposal and referred to statements made by Canadian National Railways officials that all savings practical of attainment could be secured under a policy of enforced co-operation, with respect to which it was held that savings of from \$10,000,000 to \$15,000,000 might be effected even under the then depressed condition of railway transport. It was the view of the Senate Committee "that it is in the interest of the railways and of business generally that the uncertainty resulting from the Canadian Pacific agitation for unification be ended by frank recognition of the fact that unification of the railways is not possible of adoption and that further and more serious attempts should be made to give effect to the letter and the spirit of the Canadian National-Canadian Pacific Act, 1933." The Committee concluded that it was not advisable to modify the terms of the Act, until its possibilities were more thoroughly ascertained.

Shortly after the outbreak of war in 1939 the railways found themselves in a position where all their available facilities were required and consideration of co-operative projects of any consequence ceased. It was not until the post-war period and after an application for a 30% increase in freight rates was made by the railways that attention was directed again towards the importance of effecting economies through co-operative projects.

B. PROVISIONS OF THE ACT

The parts of the Canadian National-Canadian Pacific Act 1933 (23-24 George V. Chapter 33) relevant to co-operation are the introductory Part consisting of Sections 1 to 3, Part I, Section 14 and Parts II and III consisting of Sections 16 to 28 and the Commission has limited its attention accordingly.

Section 16(1) of the Act is in part as follows:

"The National Company . . . and the Pacific Company . . . are, for the purposes of effecting economies and providing *for more remunerative operation* directed to attempt forthwith to agree and continuously to endeavour to agree, and they respectively are, for and on behalf as aforesaid, authorized to agree, upon such co-operative measures, plans and arrangements as are fair and reasonable and best adapted (with due regard to the equitable distribution of burden and advantage as between them) to effect such purposes."

Three important features of this Section are:

- (i) That the legislation is to enable the railways to effect economies — this is the principal objective of the Act;
- (ii) That in the pursuit of economy the two railways are to attempt to agree upon co-operative measures, i.e. co-operation by agreement is the means of attainment of the objective; and
- (iii) That both the burden and advantage are to be equitably distributed between the two railways — Parliament did not expect nor intend that one railway should bear the burdens and the other should reap the advantages. One must not lose sight of these features.

Part III of the Act provides for the setting up of a tribunal for the settling of disputes if any arise, the presiding officer of any tribunal to be the Chief Commissioner of the Board of Transport Commissioners for Canada and the other members of the tribunal to be one representative from the Canadian National Railway and one from the Canadian Pacific Railway.

Section 14, Subsection (1), of the Act (as amended) deals with the report to Parliament and reads as follows:

"The Board of Directors (Canadian National Railways) shall make a report annually to Parliament setting forth in a summary manner the results of their operations, any co-operative measures, plans or arrangements effected pursuant to this Act, any economies or more remunerative operation thereby produced, the amounts expended on capital account in respect of National Railways and such other information as appears to them to be of public interest or necessary for the information of Parliament with relation to any situation existing at the time of such report, or as may be required from time to time by the Governor in Council."

Section 27 of the Act provides:

"Nothing in this Act shall be deemed to authorize the amalgamation of any railway company which is comprised in National Railways with any railway company which is comprised in Pacific Railways nor to authorize the unified management and control of the railway system which forms part of National Railways with the railway system which forms part of Pacific Railways."

This may be taken as a clear intimation that co-operation was not to reach the stage of amalgamation or unification. The two systems were to co-operate to achieve economy, but their identities were to be kept separate both corporate-wise and management-wise.

C. ACCOMPLISHMENTS UNDER THE CANADIAN NATIONAL- CANADIAN PACIFIC ACT

It appears from evidence submitted to this Commission that the Act has been invoked chiefly with regard to passenger train pooling. There were also some line abandonments, joint freight and passenger facilities, running rights and haulage of freight without line abandonment and certain miscellaneous projects including joint operation by the two companies of the Vancouver Hotel. Appendix "A" to this Chapter contains a memorandum showing details of various co-operative projects. The Canadian National Railways and the Canadian Pacific Railway Company through their working committee, the Joint Co-operative Committee, have made seventeen studies which have resulted in co-operative action producing an annual joint economy of approximately \$1,189,240, of which some \$972,000 was from passenger train pooling in Ontario and Quebec. Other studies have been made of projects which it was estimated might produce further joint economies of \$774,525 annually, but which for various reasons have not been put into effect. Still other projects were investigated, but not proceeded with.

It will be noted that co-operative action with respect to passenger train pooling, joint freight and passenger facilities, joint switching, haulage of freight by one company for the other and change of interchange location took place during the two years 1933 and 1934. Projects with regard to "line abandonments with joint use of remaining line" and "line abandonments with abandonment of territory" took place for the most part during the period 1936 to 1941.

With the outbreak of war in 1939 emphasis was placed on utilization of facilities rather than on abandonment and as the war progressed the need for all existing facilities became increasingly apparent. Work on co-operative projects ceased and between 1941 and 1947 none was adopted. In the period 1947-48 there were two projects with regard to line abandonments.

Since this report is to deal only with co-operative measures brought about under the Act, this Chapter is confined to such matters. It is useful to add, however, that for years before the Act came into force the practice of the railways was to enter into joint arrangements with one another, e.g. joint facility agreements providing for joint use of the facilities of another company. In addition there are other instances of co-operation between the railroads with respect to such items as integration of communication facilities; co-operative measures involving the handling of express traffic, etc. This is pointed out merely to show that there are co-operative activities between the railways other than those brought about by the Act.

D. COMPLAINTS AND SUGGESTIONS

The main complaints were:

(1) That the railways had not adopted sufficient co-operative measures under the Act — references were made to the estimates of possible economies predicted at the time of the Royal Commission of 1931-32.

(2) That there is no jurisdiction in the Board of Transport Commissioners or in any other body to investigate what measures the railways have taken under the Act or to see that all possible economies have been effected.

(3) That if the railways cannot agree on a measure it ends there and there is no one to "enforce co-operation". (There is however in the Act provision for an arbitral tribunal to settle disputes between the two railway companies.)

(4) The railways complain that on measures where they have reached agreement where abandonments of lines were involved, some of the parties who now urge co-operation opposed railway applications to the Board for the approval of such abandonments.

The suggestions made to the Commission may be summarized as follows:

(a) The Board of Transport Commissioners should have jurisdiction to investigate possible co-operative measures and to recommend the adoption of them by the railways, and to make report thereon to Parliament;

(b) The Board should have power to enforce "Co-operation" between the railways;

(c) In rate cases, the Board should not grant increases in rates until the railways have affirmatively shown that all possible economies under the Act have been effected;

(d) Another proposal was that a new tribunal should be set up to conduct research into possible co-operative measures and to make recommendations to the railways and to submit reports to Parliament;

(e) The railways took the position that the Act should remain in force, and that no amendments are required.

E. CONCLUSIONS

1. The Act was passed to effect economies in railway operations during the depression and to improve railway revenues. Its primary purpose was not to lower rates. It should be noted, however, that estimates of saving made at the time of the Royal Commission of 1931-32 were based upon a theory of amalgamation or unification.

2. At the time of enactment economic conditions and the tactics of the two railways fully justified the legislation.

3. The results achieved under the Act have been twofold: (i) economies have resulted which exceeded a million dollars a year in the 1930's; (ii) the railways have been deterred from damaging and wasteful competition. In judging of the success of the Act both results must be considered.

4. The possibility of making further economies is restricted by the growth which has taken place in the volume of traffic; but the importance of preventing extravagant competition remains. No one appearing before this Commission recommended or favoured the repeal of the Act.

5. Under present conditions, shippers have a direct interest in economies in railway operation which they did not have in the 1930's. At that time the emphasis had been on economies since it was not possible to increase rates, whereas during the last few years with increased volume of traffic and higher operating costs rates have been increased to bring railway revenues up to appropriate standards. Shippers or their spokesmen have therefore raised the question of whether full use is being made of the Act.

6. Economies usually involve the employment of less labour and they usually curtail the services offered to shippers. In the 1930's, when neither labour nor shippers were likely to benefit from the economies, they were certain to meet with opposition. Greater economies could have been effected if the railways had not met with so much opposition from localities affected by proposed curtailment of services and abandonments of lines. Appendix "A" shows that savings of more than \$435,000 per annum could have been made.

7. There is always some danger of short-sighted economies. Lines which it was once thought prudent to abandon have since been justified by increases in the volume of traffic; and the growth of population has made some measures of co-operation unnecessary. In such questions no judgment can be infallible and the best decision is probably that reached by experienced railway officials.

8. The suggestion that the Board, in revenue cases, should require the railways to show that they have neglected no possible economy under the Act seems unworkable. It would require the railways to prove a negative and would lend itself to obstruction.

9. The Act has served a useful purpose. In proposing amendments to it, the aim of the Commission is to improve the character of the annual report received by Parliament.

F. RECOMMENDATIONS

The Commission recommends that the Act be continued but be amended so as to provide that the annual report submitted to Parliament by the Directors of the Canadian National Railways shall contain a separate section giving in a summary manner information concerning:—

- (i) The results achieved and the economies effected under the Act during the immediately preceding fiscal year of the railways.
- (ii) Co-operative projects then approved by the railways but not yet completed.
- (iii) Co-operative projects then approved by the railways but not proceeded with and the reasons therefor.
- (iv) Co-operative projects studied by the railways but not approved and the reasons therefor.
- (v) Co-operative projects currently being studied by the railways, and such other information as appears to the Directors to be of public interest or necessary for the information of Parliament with relation to any situation existing at the time of such report or as may be required from time to time by the Governor in Council.
- (vi) An estimate of the annual value, having regard to the traffic conditions and cost of railway operations obtaining at the time of the report, of continuing co-operative measures, such as the pooling of trains.

APPENDIX A

CANADIAN NATIONAL - CANADIAN PACIFIC ACT
JOINT CO-OPERATIVE COMMITTEE RESULTS
1933 to 1949

The following statements indicate the results achieved under the C.N.-C.P. Act from its inception in 1933 to January 1, 1949:

STATEMENT 1

JOINT CO-OPERATIVE COMMITTEE PROJECTS
IN EFFECT AS OF JANUARY 1, 1949

	Estimated Annual Joint Economy	
<i>Passenger Train Pooling</i>		
Montreal-Toronto, Toronto-Ottawa Limited Pool effective April 2, 1933.	\$495,000	
Montreal-Toronto, Toronto-Ottawa Montreal-Quebec extended pool effective March 11, 1934.	477,000	\$ 972,000
<i>Joint Freight & Passenger Facilities</i>		
Saint John, N.B. Consolidation of Car Cleaning & Repair Staffs under C.N. Supervision, effective December 1, 1933.	10,163	
Fredericton, N.B. C.P. Freight Office and Shed & C.N. Passenger Station closed and joint use of remaining facilities, effective March 1, 1934.	8,895	
Quebec, P.Q. Consolidation of Car Cleaning Staffs under C.P. super- vision, effective June 16, 1933.	17,736	
Gladstone, Man. Joint use of C.N. Station, effective July 3, 1933. ...	2,800	39,594
<i>Joint Switching</i>		
Portage la Prairie, Man. Each company performs joint yard and industrial switching in alternate months, effective November 1, 1933.	7,500	7,500
<i>Handling of Freight by One Company for the Other</i>		
Fredericton, N.B.-Vanceboro, Maine, C.N. traffic hauled by C.P. effective December 1, 1933.	9,000	
Calgary-Edmonton, Alta.-Kamloops, B.C., C.N. grain traffic origina- ting in Calgary district hauled to Kamloops by C.P., and C.P. grain traffic originating in Edmonton district hauled to Kamloops by C.N., effective November 13, 1933.	60,000	69,000
<i>Change in Interchange Location</i>		
Freight traffic formerly interchanged at Lennoxville, P.Q., now interchanged at Lower Sherbrooke, P.Q., effective January 1, 1934	4,416	4,416
<i>Line Abandonments with Joint Use of Remaining Line</i>		
Cyr-Edmundston, N.B., C.P. abandoned 27.6 miles of line and use C.N. line between these points, effective July 1, 1936.	30,000	
Iberville-Farnham, P.Q. C.N. abandoned 10.9 miles of line between these points, effective April 26, 1936.	12,347	
Red Deer Jct.-Red Deer, Alta., C.N. abandoned 4.9 miles of line and use C.P. line between these points, effective March 27, 1941. ...	2,560	
Alix-Nevis, Alta., C.N. abandoned 9.5 miles of line and use C.P. line between these points, effective October 18, 1948.	6,135	
Trelle Jct.-Morinville, Alta., C.N. abandoned 12.2 miles of line and use N.A.R. line between these points, effective September 1, 1947	8,688	59,730
<i>Line Abandonment with Abandonment of Territory</i>		
St. Canut-Cushing Jct., P.Q., C.N. abandoned 24.6 miles of line and discontinued business in the territory, effective August 1, 1940. .	24,000	
Linwood-Listowel, Ont., C.P. abandoned 16.5 miles of line and dis- continued business in the territory, effective May 14, 1939.	13,000	37,000
Estimated Annual Joint Economy from all Joint Co-operative Com- mittee Projects in Effect as of January 1, 1949.		<u>\$1,189,240</u>
Miles of line abandoned.	C.N. 62.1 C.P. 44.1	
Total.	106.2	

STATEMENT 2

LINE ABANDONMENT PROJECTS APPROVED BY BOARD OF
TRANSPORT COMMISSIONERS BUT NOT EFFECTIVE

	Estimated Annual Joint Economy	
Middleton-Bridgetown, N.S.		
C.N. abandon 13.2 miles of line and withdraw from territory....	\$ 16,800	
Langdon-Beiseker, Alta.		
C.N. abandon 10 miles of line. C.P. abandon 22.6 miles of line.		
Each company use remaining lines in territory jointly.....	30,500	
Forth-Ullin, Alta.		
C.P. abandoned 64.7 miles of line and withdraw from territory.		
C.N. abandon 6.5 miles and lease 7.0 miles of C.P. abandoned line	<u>58,000</u>	<u>\$ 105,300</u>

STATEMENT 3

LINE ABANDONMENT PROJECTS CONSIDERED BY BOARD OF
TRANSPORT COMMISSIONERS BUT NO ORDER ISSUED

	Estimated Annual Joint Economy	
Dranoel-Medonte, Lindsay-Bobcaygeon, Ontario.		
C.P. abandon 90.3 miles of line and withdraw from territory.		
C.N. lease 16.2 miles of abandoned line and agree that C.P. may		
have through running rights on C.N. line between Medonte and		
Peterboro when certain specific future conditions obtained.....	<u>\$ 55,700</u>	<u>\$ 55,700</u>

STATEMENT 4

LINE ABANDONMENT PROJECTS RECOMMENDED BY JOINT CO-OPERATIVE
COMMITTEE BUT DISALLOWED BY THE BOARD OF
TRANSPORT COMMISSIONERS

	Estimated Annual Joint Economy	
Arnprior-Eganville, Ont.		
C.N. abandon 37.9 miles of line and withdraw from the territory..	\$104,000	
Cataract-Fergus, Ont.		
C.P. abandon 24.7 miles of line and withdraw from territory....	22,724	
MacGregor-Varcoe, Man.		
C.P. abandon 54.4 miles of line and withdraw from territory....	45,000	
Louise-Deloraine, Man.		
C.N. abandon 56.3 miles of line and withdraw from territory....	30,000	
Portage la Prairie-Gladstone, Man.		
C.N. abandon 36.4 miles of line. Each company use remaining		
line in territory jointly.....	34,500	
Hamiota-Miniota, Man.		
C.P. abandon 19.8 miles of line and withdraw from territory....	15,000	
Hallboro-Beulah, Man.		
C.N. abandon 75.2 miles of line and withdraw from territory....	65,000	
Reston-Wolseley, Sask.		
C.P. abandon 122.4 miles of line and withdraw from territory..	104,550	
Carbondale-Egremont, Alta.		
N.A.R. abandon 29.8 miles of line. C.N. and N.A.R. use remain-		
ing line in territory jointly.....	<u>14,421</u>	<u>\$ 435,195</u>

STATEMENT 5

PROJECTS RECOMMENDED BUT NOT PROCEEDED WITH

	Estimated Annual Joint Economy	
Joint Switching: Mimico-Swansea, North Toronto-Leaside Areas....	\$ 16,430	
Bala-Park-Wanup, Ont.		
C.N. abandon 141.2 miles of line. Each company use remaining		
line in territory jointly.....	<u>161,900</u>	<u>\$ 178,330</u>

STATEMENT 6

LINE ABANDONMENT PROJECTS STUDIED CO-OPERATIVELY BUT
ULTIMATELY PROCEEDED WITH AS EXCLUSIVE PROJECTS

Ste. Therese-St. Eustache, P.Q.

C.P. abandon 5.7 miles of line and withdraw from the territory.

Joliette-Montfort Jct. and Fresniere-Shawbridge, P.Q.

C.N. abandon 44.3 miles of line and each company use remaining line in territory jointly.

STATEMENT 7

LINE ABANDONMENT PROJECTS RECOMMENDED BUT SUBSEQUENTLY FOUND
TO BE INADVISABLE BECAUSE OF INCREASING INDUSTRIAL
DEVELOPMENT IN THE TERRITORY

Birds Hill-East Selkirk, Man., C.N. abandon 15.3 miles of line. Each company use remaining line in territory jointly.

STATEMENT 8

PROJECTS FOUND TO BE UNECONOMICAL

Scotts Jct.-North to the River, P.Q., abandon either C.N.R. or Quebec Central Railway line and both use remaining line jointly.

Lanoraie-Joliette, or Paradis-Joliette, P.Q., abandon 6.3 miles of C.P.R. line or 10.6 miles of C.N. line, both companies using the remaining line jointly.

Belair-Lachevrotiere, P.Q., alternative C.N.R. or C.P.R. line abandonments with both companies using remaining line jointly.

Federal-Smiths Falls, Ont., abandon 33.8 miles of C.N.R. line and both companies use C.P.R. line jointly.

Smiths Falls-Yarker, Ont., abandon 51.3 miles of C.N.R. line and use C.P.R. line jointly.

Glen Tay-Shannonville, Ont., abandon 69 miles of C.P.R. line with joint use of 84 miles of C.N.R. line.

Ottawa-Pembroke, Ont., abandon either C.N.R. or C.P.R. line with both companies using the remaining line.

Ottawa West-Carleton Place, Ont., abandon 24 miles of C.P.R. line and both companies using C.N.R. line jointly.

West Tower-Deer, Man., abandon 23.9 miles of C.N.R. line and both companies use C.P.R. line jointly.

Rosburn Jct.-Orrville, Man., abandon 9.2 miles of C.N.R. line and both companies use C.P.R. line jointly.

Estevan-Bienfait, Sask., abandon 6 miles of either C.N.R. or C.P.R. line.

Regina-Moose Jaw, Sask., abandon 40.0 miles of C.N.R. line, both companies using C.P.R. line jointly.

Young-Colonsay, Sask., abandon either C.N.R. or C.P.R. line.

Saint John, N.B., joint yard switching.

Toronto, Ont., joint switching, Union Station and Coach Yard.

Chatham, Ont., joint switching, Sugar Company premises.

MacTier and South Parry, Ont., consolidation of C.P.R. locomotive and terminal facilities with those of C.N.R. at South Parry or vice versa.

Parry Sound, Ont., joint yard switching.

Estevan, Sask., joint yard and industrial switching.

Regina, Sask., joint industrial switching.

Saskatoon, Sask., joint industrial switching.

Calgary, Alta., joint yard switching.

Kelowna, B.C., joint yard switching.

Halifax, N.S., Saint John, N.B., and other points, establishment of joint ticket offices.

Montreal, P.Q.-Boston, Mass., extension of passenger train pool services to include Montreal-Boston trains.

Extension of passenger train pool to West of Toronto, Montreal-Winnipeg, Man. and Toronto-Winnipeg and West.

Pembroke-North Bay, Ont., all C.P.R. through traffic over C.N.R. line.

Kamloops-Vancouver, B.C., hauling C.P.R. through traffic over C.N.R. line.

STATEMENT 9

PROJECTS ON WHICH STUDY WAS INTERRUPTED OWING TO WAR ACTIVITIES

Between Competitive Points.....	Nation-wide pool competitive passenger train services.
Woodstock-Windsor, Ont. territory.....	Abandonment of competitive lines.
Nipigon-Current Jct., Ont.....	Abandon C.P.R. line and running rights over C.N.R. line.
Fort William-James, Ont.....	Abandon C.P.R. line and running rights over C.N.R. line.
Winnipeg-Morris, Man.....	Abandon either C.N.R. or C.P.R. line and joint use of other line.
Brandon-Maon, Man.....	Abandon C.N.R. line and joint use of C.P.R. line.
Saskatoon-Unity, Sask.....	Abandon functionally duplicate line.
Bruderheim-Edmonton, Alta.....	Abandon functionally duplicate line.
Fort William & Port Arthur.....	Joint operation of Lake Head Terminals.
Saskatoon, Sask.....	Union Passenger Terminal.
Calgary, Alta.....	Union Passenger Terminal.
Edmonton, Alta.....	Union Passenger Terminal.
Edmonton & Calgary to Vancouver, B.C.....	Extension of co-operative agreement for handling westbound grain to Kamloops to include freight traffic. Vancouver to be made interchange point.
Okanagan Valley-Vancouver, B.C.....	Handling of freight traffic by one company for the other.
System.....	Territorial withdrawals of duplicate telegraph offices on a reciprocal basis.

STATEMENT 10

OTHER PROJECTS WHICH HAVE RECEIVED STUDY

Montreal-Vaudreuil.....	Pooling of suburban service.
Okanagan Valley.....	Pooling of train and boat services.
Shannonville-Darlington, Ont.....	Abandon C.P.R. line and use jointly C.N.R. line.
North Bay-Yellek, Ont.....	Abandon 7.9 miles C.N.R. line and joint use of C.P.R. line and station.
Sudbury, Ont.-Winnipeg, Man.....	Abandonment of duplicate lines.
Kamloops-Vancouver, B.C.....	Abandon either C.N.R. or C.P.R. line and joint use of other line.
Halifax, Yarmouth, Regina, Saskatoon....	Freight Terminals Regina & Saskatoon, and joint facilities Halifax and Yarmouth.
North Bay, Ont.....	C.P. station facilities to be used jointly.
Sudbury, Ont.....	Joint Passenger and Freight Terminals.
Ottawa, Ont.....	Joint use of C.P.R. locomotive terminal facilities at Ottawa West and C.N.R. locomotive facilities at Deep Cut.
C.N.R. & C.P.R. Telegraph Companies...	Consolidation of Commercial Telegraph Companies.
C.N.R. & C.P.R. Express Companies....	Consolidation of Express Departments.
St. Johns, P.Q.-White River, Vt.....	Running rights for C.P.R. trains over C.N.R. tracks.
Sherbrooke, P.Q.-St. Johnsbury, Vt.....	Handling of C.P.R. freight traffic to New England points via C.N.R. lines.
Montreal.....	Montreal Joint Stock Yards.
Kamloops-Hope, B.C.....	C.P.R. to use C.N.R. line for freight service and C.N.R. to use C.P.R. line for passenger service.
Pacific Coast Steamships.....	Amalgamation of present fleets under a separate company or the elimination of duplicate service.

CHAPTER IX

THE MARITIME FREIGHT RATES ACT

As a result of the recommendations contained in a report of the Royal Commission on Maritime Claims dated September 23, 1926, Parliament enacted the Maritime Freight Rates Act, 17. George V, Chapter 44.

The preamble to the Act reads as follows:

"WHEREAS the Royal Commission on Maritime Claims by its report, dated September 23rd, 1926, has, in effect, advised that a balanced study of the events and pronouncements prior to Confederation, and at its consummation, and of the lower level of rates which prevailed on the Intercolonial System prior to 1912, has in its opinion confirmed the representations submitted to the Commission on behalf of the Maritime Provinces, namely that the Intercolonial Railway was designed, among other things, to give to Canada in times of national and imperial need an outlet and inlet on the Atlantic Ocean, and to afford to Maritime merchants, traders and manufacturers the larger market of the whole Canadian people instead of the restricted market of the Maritimes themselves, also that strategic considerations determined a longer route than was actually necessary, and therefore that to the extent that commercial considerations were subordinated to national, imperial and strategic conditions, the cost of the railway should be borne by the Dominion, and not by the traffic which might pass over the line;

"AND WHEREAS the Commission has, in such report, made certain recommendations respecting transportation and freight rates, for the purpose of removing a burden imposed upon the trade and commerce of such Provinces since 1912, which the Commission finds, in view of the pronouncements and obligations undertaken at Confederation, it was never intended such commerce should bear;

"AND WHEREAS it is expedient that effect should be given to such recommendations in so far as it is reasonably possible so to do without disturbing unduly the general rate structure in Canada;

"THEREFORE His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:"

There are two important statements in the preamble which form a guide in reaching decisions on the various claims put forward by parties appearing before the Commission asking that the Act be amended in various ways:

1st. The recognition of pre-Confederation pronouncements that the Intercolonial Railway was designed to afford Maritime merchants, traders and manufacturers the larger market of the whole Canadian people instead of the restricted market of the Maritimes themselves; and

2nd. The recognition that, having regard to such pre-Confederation pronouncements, the burden imposed upon the trade and commerce of the Maritime Provinces resulting from increased freight rates after 1912 was never intended to be borne by such trade and commerce.

Section 4 of the Act lists "preferred movements":⁷

- "(a) Local traffic, all rail—Between points on the Eastern lines; for example Sydney to Newcastle;
- (b) Traffic moving outward, westbound, all rail—From points on the Eastern lines westbound to points in Canada beyond the limit of the Eastern lines at Diamond Junction or Levis; for example, Moncton to Montreal—the twenty per cent reduction shall be based upon the Eastern lines proportion of the through rate or in this example upon the rate applicable from Moncton west as far as Diamond Junction or Levis;
- (c) Traffic moving outward, export traffic, rail and sea — From points on the Eastern lines through ocean ports on the Eastern lines destined overseas; for example, Fredericton to Liverpool via St. John—the rate affected shall be that applicable from Fredericton to St. John."

And also provides that traffic moving over car ferries shall be treated as all-rail traffic.

For greater clarity Section 5 lists movements which are not "preferred";

- "(a) Traffic moving inward or outward to or from the United States, all rail—From or to points in the United States to or from points on the Eastern lines;
- (b) Traffic moving inward, eastbound, from Canada, all rail—From points in Canada not on the Eastern lines eastbound to points on the Eastern lines; for example—Toronto to Moncton;
- (c) Import traffic to Canada, originating at points overseas; for example, Liverpool to Moncton or to Toronto;
- (d) Passenger movements and express movements."

Although the Act is entitled "An Act respecting the Canadian National Railways and the tariffs of tolls to be charged on certain Eastern lines," provision is made by Section 9 for its application to other railways operating in the "Select Territory" which includes the Maritime Provinces and part of the Province of Quebec.

Section 3 of the Act provides for the cancellation of freight tariffs existing on July 1, 1927, on "preferred" movements and the substitution of tariffs showing a reduction of approximately 20%.

Section 6 provides as follows:

"6. For accounting purposes, but without affecting the management and operation of any of the Eastern lines, the revenues and expenses of the Eastern lines, including the reductions herein authorized which shall be borne by the Eastern lines, shall be kept separately from all other accounts respecting the construction, operation or management of the Canadian National Railways."

"2. In the event of any deficit occurring in any railway fiscal year in respect of the Eastern lines the amount of such deficit shall be included in a separate item in the estimates submitted to Parliament for or on behalf of the Canadian National Railways at the first session of Parliament following the close of such fiscal year."

Section 7 provides as follows:

"7. The rates specified in the tariffs of tolls, in this Act provided for, in respect of preferred movements, shall be deemed to be statutory rates, not based on any principle of fair return to the railway for services rendered in the carriage of traffic; and no argument shall accordingly be made, nor considered in respect of the reasonableness of such rates with regard to other rates, nor of other rates having regard to the rates authorized by this Act."

Section 8 provides as follows:

"8. The purpose of this Act is to give certain statutory advantages in rates to persons and industries in the three provinces of New Brunswick, Nova Scotia and Prince Edward Island, and in addition upon the lines in the province of Quebec mentioned in section two, together hereinafter called 'select territory,' accordingly the Board shall not approve nor allow any tariffs which may destroy or prejudicially affect such advantages in favour of persons or industries located elsewhere than in such select territory."

(These sections appear to be exceptionally broad in scope and stringent in application. They are not concerned with granting equality in treatment between the select area and the rest of the country. On the contrary they prescribe advantages in rates which persons and industries in this area are to enjoy over those in the other areas. And they make it the Board's duty not to approve or to allow any tariffs which may affect such advantages.)

To sum up, then, it may be said that the effect of the Act is that:

On westbound traffic as far as Levis from any point in the Select Territory and on all local traffic within such territory the rates are 20% below the rates

in effect on July 1, 1927, subject, however, to any increases or decreases which have been or may hereafter be allowed by the Board to meet increases or reductions in cost of railway operations after July 1, 1927, permitted by Section 3(2)(b). These rates are made statutory rates not based on any principle of fair return to the railways, and the purpose of the Act is to give certain statutory advantages in rates to persons and industries in the Select Territory, and the Board is not permitted to approve or allow any tariffs which may destroy or prejudicially affect such advantages in favour of persons or industries located elsewhere.

The difference between "normal" tolls and the tolls in the tariffs established under the Act is paid by the Government to the railways and included in the annual estimates submitted to Parliament.

The provisions of the Act were made applicable on and after April 1, 1949, to the Newfoundland Railway, including the steamship service between North Sydney and Port aux Basques.

It is perhaps important in considering the matter to bear in mind that the 20% reduction was based on a calculation made by the Royal Commission under the Chairmanship of Sir Andrew Rae Duncan, which found that from 1876 to 1912 rates over the Intercolonial Railway had been kept at a low level to carry out the policy of successive federal governments and the pledges that had been made prior to Confederation. The Duncan Commission found that the rates had been increased after 1912 on the Intercolonial so that "their 100 had become 192" and that the estimated average increase of rates in the rest of Canada was 55%, so that "their 100 has become 155". The 20% reduction on the Intercolonial rates was intended to make the 192 become approximately 155, and thus restore the position previously enjoyed.

COMPLAINTS AND SUGGESTIONS

1. The chief complaint presented to the Commission concerning the operation of the Act had to do with a situation which arises out of truck competition in the Provinces of Quebec and Ontario. It was alleged by the Maritime Board of Trade that, as a result of truck competition in these provinces, the railways had reduced their rates on traffic in Central Canada while maintaining them on similar traffic moving from the Maritimes to Quebec and Ontario. This, it was urged, was contrary to the provisions of Section 8 of the Act. A case dealing with the matter was brought before the Board in connection with rates on potatoes: *Maritime Board of Trade v. C.N.R.* 44 C.R.C. 289, and was appealed to the Supreme Court of Canada: 46 C.R.C. 161. The Board found that it had not been proven that the competitive tariffs had resulted in the destruction of, or to the prejudice of, the advantages provided to shippers in select territory under the Act. The Supreme Court refused to disturb the finding of fact made by the Board. Two important observations were made in that case. First, one made by the Board when it pointed out that the cancellation of the competitive rates in Ontario would not improve the position of the Maritime shippers in any degree since the raising of tolls in Ontario would merely drive business to the trucks and the Board has no authority to lower tolls in the Maritimes because of competition existing in another part of the country. It would only result in depriving the Railways of the small portion of the transportation of potatoes in Ontario which they have been able to retain even under a substantial reduction in rates. Second, one made by the Supreme Court when it held that, while the Board had power to cancel rates in outside territory which might destroy the statutory advantages given by the Act, it has no power to vary rates in select territory by allowing a reduction proportionate to the reduction made by the Railways in the territory outside the select territory.

The Maritime Board of Trade contends that the effect of these findings is:

- (a) It is "practically impossible to indicate prejudice as required by the Board because of so many economic factors involved which might influence the movement separate and apart from transportation. The difficulty is to segregate the transportation factor from the others and have it appear as the (sole) cause of the destruction of Maritime trade at a particular time and place . . ."
- (b) The "fact remains, however, that competitive rates tend to destroy rate relationships on which industries have been constructed and developed and the industries within the pale of motor and water transportation have a distinct advantage over those which are located outside and are competing in the same competitive zone."
- (c) Although the Act as interpreted is applicable to competitive rates outside the "select territory", if such rates prejudicially affect or destroy the statutory advantages, "the Act is valueless if the rates are bona fide competitive."
- (d) As a result these changes which have taken place mainly outside select territory have tended to "nullify" or "whittle away" the statutory advantages intended to be maintained by the Act.

The Maritime Board of Trade accordingly asked the Commission to recommend an amendment to the Maritime Freight Rates Act, by adding after the word "territory" in line 9 of Section 8 the following:

"and the Board is authorized and directed to adjust or vary tolls or rates subject to the Act from time to time as may, in the opinion of the Board, be necessary to maintain the said statutory advantages in rates when there have been reductions in tolls or rates elsewhere than in such select territory."

This proposed amendment was supported by Nova Scotia, New Brunswick and Prince Edward Island.

The railways opposed the proposed amendment on the grounds (a) that the Act was never intended to keep constantly in balance the relationship between competition and regions as it existed when the Act was passed; (b) that the so-called "whittling away" of the statutory advantages to persons and industries in the Maritimes by rate reductions in Central Canada arises out of truck competition in Ontario and Quebec and not out of any voluntary action by the railways, and (c) that the proposed amendment would unduly extend the preferences intended to be created by the Act.

2. The second complaint was that the effect of the recent horizontal increases had destroyed or prejudiced the statutory advantages given to persons and industries in the select territory by Section 8 of the Act. In the briefs presented by the governments of New Brunswick and Nova Scotia and the Maritime Board of Trade it was proposed that the statutory reduction should apply as far west as Windsor, Ontario, or at least as far as Toronto, and not merely over the portion of the haul in select territory.

It must be assumed that the proposal has since been abandoned because none of the amendments submitted by any of the Maritime Provinces or the Maritime Board of Trade deal with the matter, and indeed the amendments which they do submit to other sections of the Act indicate that the reduction should apply on only the Eastern lines proportion of the through rate.

3. The Province of New Brunswick also asked the Commission to recommend that the 20% reduction under the Act be changed to 30%. It was stated that this would not restore the rate levels which prevailed prior to the recent post-war increases, but would partially compensate for such increases. Presumably the recent increases would be applied against the "normal" tolls less 30% instead of against the "normal" tolls less 20%.

4. The Province of New Brunswick asked the Commission to recommend that the statutory reduction increased as above to 30% apply to inward or eastbound traffic as well as to outward or westbound traffic. The avowed purpose of the proposal was to lower the prices to domestic consumers, and by cutting the costs to manufacturers of goods used in their production, to reduce the disadvantages suffered by the New Brunswick manufacturers.

There was a difference of opinion between some of the manufacturers in New Brunswick on the one hand and the Government of the Province on the other. The manufacturers apparently do not want the reduction on inward or eastbound traffic. Counsel for the province stated that his government was mainly concerned with consumers, and was not in favour of building up industry in New Brunswick "under the protection of high freight rates".

5. Prince Edward Island asked that the Act be amended so as to make the statutory reduction apply to inward or eastbound traffic but only on specific articles entering into production costs of their basic industries, e.g. on agricultural machinery, trucks, tractors, fertilizer, fishing equipment and supplies.

6. At present the provisions of the Act apply to traffic moving by car ferries across the Straits of Northumberland, and Canso, and also by steamships (not being car ferries) across the Cabot Strait, but not to the Canadian Pacific Steamships plying between Saint John, N.B., and Digby, N.S. The Maritime Board of Trade asks for an amendment to the Act which would provide that "through traffic between Saint John and Digby moving over a steamship service owned, chartered, used, maintained or worked by a Railway Company subject to this Section 9 shall be treated as all-rail traffic. Both the Canadian Pacific and Canadian National railways supported the proposed amendment.

7. Under existing legislation the Act applies only to all-rail movements beyond Levis. Nevertheless the practice of the railways and of the Board is to apply it also to rail-and-lake and to rail-lake-and-rail movements beyond Levis, for example, Moncton to Winnipeg, via steamer from Point Edward or Port McNicoll to Port Arthur or Fort William. The Maritime Board of Trade proposed to amend the Act to make it conform to this practice. The railways supported the proposal.

8. Under a decision of the Supreme Court of Canada the Saint John gateway is effectively closed to westbound traffic originating on Canadian National lines in the select territory. The Maritime Board of Trade and the Province of Prince Edward Island ask to have the Act amended so as to enable alternative routings. This matter is dealt with under a separate heading, "The Saint John Gateway".

9. The Canadian Pacific Railway proposed that the Board be given power to adjust or vary tolls under the Act as may, in its opinion, be necessary to give effect to any general readjustment of rates in Canada. The railway pointed out that at the present time the Board may vary tolls from time to time as new industrial or traffic conditions arise, or may increase or reduce tolls when there are increases or reductions in cost of railway operations, but that the Act in its present form does not permit a change to provide for such a general readjustment in rates as might be brought about by a scheme for equalization of rates across Canada, and that hence the Act might stand in the way of an equalization proposal.

The Maritime Board of Trade and the Maritime Provinces opposed the amendment proposed by the Canadian Pacific.

10. The Canadian National Railways asked for the repeal of Section 6 of the Maritime Freight Rates Act. The Company says that it does not keep separate accounts for its eastern lines, but collects its share of the subsidies payable under the Act in the same manner as other railways operating in the select territory.

The Royal Commission presided over by Sir Lyman Poore Duff stated that "no good purpose is served by such a division in the accounts," and that the Act "should be applied to the Canadian National Railways in a similar manner to that of other railways" operating within the select territory.

11. The City of Quebec and the Chamber of Commerce of that City asked that the City of Quebec be included in the select territory. This matter is separately dealt with elsewhere in this report under the heading "Claim of the City of Quebec for extension of Maritime Freight Rates Act".

12. There were complaints about the "arbitrariness" over Montreal and the Commission was asked to recommend that they be restored to, and maintained by law at, the level of July 1, 1927. This matter is dealt with separately under the heading "Arbitrariness over Montreal".

13. Although the foregoing are the principal complaints and suggestions made regarding the legislation there were others of a more general character and these may be summarized as follows:

- (a) The Canadian National Railways are opposed to its extension, and state that no other Acts should be passed based upon the same principle;
- (b) The Canadian Pacific Railway agrees that the principle of the Act should not be extended, but does not recommend its repeal or alteration because vested interests have been built up under it which might be destroyed. The company states (i) that this type of assistance does not encourage normal or desirable economic development, and (ii) its extension would be detrimental to the national interest, and would result in serious rigidities in the rate structure and constant claims for further extensions;
- (c) The Vancouver Board of Trade submits that there should be no statutory rates and that rates under the Act should be subject to review by the Board;
- (d) The British Columbia Fruit Growers' Association is of opinion that the rates in the Maritimes should be "returned to the jurisdiction of the Board";
- (e) The British Columbia Feed Manufacturers' Association suggests that all statutory rates should be subject to change by the Board to reflect changes in economic conditions; and
- (f) Submissions coming from the Maritime Provinces are to the effect (i) that the percentage (20%) reduction is now inadequate and should be increased (although no definite amount was stated); (ii) that the reduction should apply to eastbound goods coming into New Brunswick and Nova Scotia to be processed; (iii) that the reductions should apply eastbound especially on goods protected by customs tariffs; (iv) that if the "statutory advantages" have been prejudiced by horizontal increases the Act should be amended to allow the Board to provide the necessary relief; (v) that the Act does not improve the position of the consumer in the Maritimes; (vi) that horizontal increases have disturbed rate relationships established under the Act.

14. In a brief submitted by the Furness Red Cross Line, the Furness-Warren Line and the Newfoundland Canada Steamship Line it was stated that the extension of the Act to Newfoundland gives rail traffic an advantage over steamship lines, and that the Act should be made applicable to water shipments to Newfoundland so that steamships could be subsidized, in a manner similar to the railways, i.e. by the payment of the difference between the "normal" tolls and the reduced tolls published in the tariffs pursuant to the Act.

CONCLUSIONS

Complaint No. 1 Regarding Truck Competition: In effect, what is asked for here is that if a competitive rate is published the Board should make whatever adjustment of the rates under the Maritime Freight Rates Act may be necessary to maintain the advantages of the select territory even against truck, and not only railway, competition elsewhere. In such case the railways would probably decide not to reduce tolls to meet competition, and the persons and industries in the Maritimes would be no better off because the producers in Central Canada could still transport their goods by truck.

The proposed amendment is subject to two objections: (1) it would ensure to the Maritimes all the competitive rates regardless of whether or not there was competition for the railways in the select territory, and would thus confer an additional advantage to persons and industries not intended by the Act, and (2) it would be contrary to the rate-making principle that competitive rates are in the discretion of the railways and are put in force to preserve at least some of the traffic to the railways.

The persons and industries in the select area are sufficiently protected in this respect by the Act as it now stands. If they can show that a rate put into effect outside of the select territory prejudices or destroys the statutory advantages of persons or industries in the select territory they can apply to the Board for the cancellation of the rate. This question is one of fact to be decided in each case on the particular merits involved. The statute is an extraordinary one and gives advantages which Parliament should not be asked to extend in the absence of the most compelling reasons. They should not be extended for purposes which cannot be brought within the intention of Parliament as set out in the preamble to the original Act.

The *complaints and suggestions comprised in paragraphs numbered 2, 3, 4 and 5* under the heading "Complaints and Suggestions" may be treated as being of one category. They all ask for an extension of the subsidy provisions of the Act or a reduction in the tolls under the Act either (a) by making the reduction apply to a longer portion of the through haul, or (b) by increasing the amount of the reduction from 20% to 30%, or (c) by applying the reduction to eastbound as well as westbound traffic, or at least on certain eastbound articles of traffic.

Nothing put before the Commission warrants a recommendation of such extensions of the Act. The proposals overlook the basic intent and purpose of the Act.

As has already been pointed out the reasons for the enactment of the statute are expressed in its preamble. The object of the calculation which led to the adoption of the 20% reduction in rates was to restore the advantages of the rates, lower than those in force in the other parts of Canada, which the Maritimes had enjoyed prior to 1912. It is to be observed that in the report of the Duncan Commission the following statement was made: "We think that this broad measuring, *once and for all*, of these considerations has such advantages that it should not be qualified or delayed by minor criticisms".

A change in the 20% reduction would be an unwise departure from the theory employed by the Duncan Commission in arriving at the remedy which it proposed.

The extension of the reduction beyond the limits of the Eastern lines would likewise be a disregard of the whole basis on which the Act was recommended and passed.

To apply the reduction to eastbound traffic would be to change the purpose set out in Section 8 of the Act which is to confer advantages *in rates* to persons and industries in the select territory. The claims made regarding pre-Confederation promises were that the Intercolonial Railway would enable the Maritime

merchants, traders and manufacturers to get into the Central Canadian market. There was no claim that the "consumers" were to benefit, and the Statutory Preference was not intended for that purpose. The claims made were that the merchants, traders and manufacturers were promised these markets, that the higher freight rates put in between 1912 and 1925 had prejudiced them, and that the rate advantage of 20% on westbound traffic was needed to restore the advantage.

Suggestion No. 6, concerning the steamship service between Digby, N.S., and Saint John, N.B.: The Act in its original form applied only to the two car ferries operated by the Canadian National Railways between Prince Edward Island and New Brunswick and between the mainland of Nova Scotia and the Island of Cape Breton. Both of these car ferries are rail links of the Inter-colonial Railway. They are the only links between these islands and the mainland.

By Section 4(2) of the Act traffic moving over these car ferries is treated as all-rail traffic. The principle involved is clear. A narrow strip of water separated the islands in each case from the mainland, and it was undoubtedly felt that this situation should not adversely affect rail traffic or the rate payable by persons on the respective islands.

When Newfoundland became a part of Canada in 1949, it was provided by the Terms of Union that "for the purpose of railway rate regulation the Island of Newfoundland will be included in the Maritime Region of Canada, and through traffic moving between North Sydney and Port aux Basques will be treated as all-rail traffic," and the Statute Law Amendment (Newfoundland) Act made similar provision (Section 13). While it is true that in the case of the service between North Sydney and Port aux Basques the railway cars are not ferried, there was nevertheless a sound reason for dealing with the matter in this way. Newfoundland was coming into Canada as a new Province, and it seemed altogether proper to provide for it what can be deemed to be an "all-rail link" to unite it with the rest of Canada, as in the case of Prince Edward Island.

The steamship service operated by the Canadian Pacific Railway Company between Saint John and Digby does not fall within the same category as the three "all-rail routes" above referred to, nor are there the same compelling reasons for making it or deeming it to be an all-rail route. For all practical purposes the routes across the Northumberland and Canso Straits are all-rail routes; the route across the Cabot Strait was made all-rail for the reasons given above. No circumstances exist which would warrant the according of such special treatment to the steamship service between Digby and Saint John.

If an extension of the Act were made in this case it would lead to the demand for a similar concession in favour of the steamship services operating from point to point within the area, and this would enlarge the scope of the Act beyond, not only what was originally intended, but what is required.

It is significant that in the case of Newfoundland the "all-rail" measure was applied to only one route, that between North Sydney and Port aux Basques, although there are several other passenger and freight services by steamships between the Island and other provinces.

Suggestion No. 7: All parties agreed that the omission of rail and lake movements beyond Levis was an oversight, and since the practice is to apply the rates to such movements, the Act should be amended to provide that traffic moving outward westbound rail-and-lake and also rail-lake-and-rail from points on the

Eastern lines westbound to points in Canada from ports beyond the limits of the Eastern lines at Diamond Junction or Levis, be treated as preferred movements.

Suggestion No. 9: This is the amendment intended to provide that the Board may adjust or vary tolls in the select area when, in its opinion, it is necessary to do so to give effect to any general readjustment of rates in Canada. It is proposed in view of the general freight rates investigation now being conducted by the Board. The Order in Council calling for this investigation, P.C. 1487, was issued in April 1948, eight months before this Commission was appointed. One of its purposes is to secure the equalization of freight rates, but it expressly excludes from this equalization such rates as are now governed by Statute. These are the Crowsnest Pass rates and the rates established under the Maritime Freight Rates Act. Shortly after Order-in-Council P.C. 1487 was issued the question of possible amendments to legislation in order to make equalization more effective was dealt with between the government and the Board. Under these circumstances it is best to leave matters as they stand and no recommendation by this Commission appears to be called for.

Suggestion No. 10: Section 6 of the Act should be repealed because it apparently serves no useful purpose and is not being complied with.

Complaints and Suggestions No. 13: The proposal that the rates under the Act should be subject to change by the Board otherwise than under its present practice cannot be recommended. The Act was designed to meet a peculiar set of circumstances and should in the language of the Duncan Report be regarded as a broad measure "*once and for all*" to fulfil the pre-Confederation promises, and it has performed and continues to perform the functions for which it was designed. Only under the most imperative conditions should it be extended or altered.

The question of the application of horizontal increases as a method of increasing freight rates is dealt with separately in this report. No good purpose can be served by including a discussion of such a question in the consideration of amendments proposed to the Maritime Freight Rates Act. If any horizontal increase is alleged to affect prejudicially the advantages conferred by Section 8 of the Act upon any industry or person within the Select Territory it is open to the person who alleges the prejudice to raise the question concerning his legal rights before the proper tribunals. The question whether the disturbance of rate relationships produces such a prejudice should also be determined in the same way.

Suggestion No. 14: There can be little doubt that the extension of the Act to Newfoundland did give to rail traffic an advantage over steamship lines. Information shows, however, that fairly satisfactory working arrangements have been made between the Railways and the Steamship Companies which alleviate to some extent the state of affairs created by the treatment of the water movement between North Sydney and Port aux Basques as all-rail traffic. In any event this is a situation which Parliament should not attempt to correct by an amendment to the Maritime Freight Rates Act. The Act was not designed as a subsidy Act except to compensate the railways for the statutory reduction in their tolls. If the steamship companies can show that they are in need of subsidies and that the service they provide is an essential one, the course for them to adopt is to apply to the Canadian Maritime Commission. Each case will undoubtedly be considered there on its own particular merits. The subject is not one to be considered in this study of the working of the Maritime Freight Rates Act.

RECOMMENDATIONS

1. It is recommended that Section 4(1) of the Maritime Freight Rates Act be amended by adding thereto a new clause (d), which will confirm the present practice of the Board and of the railways. This amendment will read as follows:
“(d) Traffic moving outward westbound rail-and-lake, and also rail-lake-and-rail from points on the Eastern lines westbound to points in Canada via ports beyond the limit of the Eastern lines at Diamond Junction or Levis; for example, Moncton to Winnipeg via the port of Point Edward thence via water to Port Arthur or Fort William—the twenty per cent shall be based upon the Eastern lines proportion of the through rate for the rail mileage from Moncton west as far as Diamond Junction or Levis.”
2. It is recommended that Section 6 of the Maritime Freight Rates Act be repealed. In this case also the repeal is intended to bring the Act into conformity with the practice now followed.
3. It is not recommended that the Act be amended in any other particular.

CHAPTER X

CROWSNEST PASS RATES

The rates known by this name form an important part of our freight rate structure. They owe their existence to action taken by Parliament, more than half a century ago, intended to assist the grain-growing industry of the Prairies. This industry gave promise at that time of becoming (as it has since become) a major factor in the economy of Canada, provided the producers were given the benefit of favourable transportation costs for the bringing in of their essential supplies and for the taking out of their products to distant world markets. Parliament acted by authorizing the making of a contract between the Government of Canada and the Canadian Pacific Railway Company, one of the terms of which was to be the fixing of these freight rates. Fuller particulars of this contract, which was concluded in September, 1897, will be given in the following pages.

The scope and application of the Crowsnest Pass Rates have been greatly altered since they first became effective. They are at present in force, (partly by statute, partly by Order of the Board of Transport Commissioners, and partly by action of the railways themselves, as will appear), in respect only to shipments of grain and flour and certain other grain products, and they are held at a level which is 3 cents per 100 pounds less than the rates charged by the Canadian Pacific Railway Company in September, 1897, on shipments of grain and flour from all points on its main line on the Prairies west of Fort William to Fort William and Port Arthur, and they apply as follows:

- (a) To shipments of grain and flour moving from all points on all lines of railway west of Fort William to Fort William and Port Arthur over all lines constructed by any company subject to the jurisdiction of Parliament;
- (b) To shipments of grain and flour moving from Prairie points to Westfort and Armstrong;
- (c) To shipments of grain and flour from Prairie points to Vancouver and the other Pacific ports for export. (But in this case the distance from Calgary to Vancouver via the Canadian Pacific Railway is assumed to be the same as the distance from Edmonton to Vancouver, that is, 766 miles instead of the actual distance of 642 miles);
- (d) To shipments of grain and flour moving from Prairie points over the Hudson Bay Railway to Churchill for export;
- (e) To shipments of certain by-products of the milling, distilling and brewing industries, and also certain feed products, not included, by strict interpretation, within the meaning of "grain" and "flour" in the foregoing paragraphs (a), (b), (c) and (d);
- (f) These Crowsnest Pass Rates have a further indirect application in that they serve to keep down the rates on domestic grain and flour shipments within Western Canada. The railways were not allowed to apply the recent freight rate increases to western domestic rates on these articles because the Board thought that such an increase would produce too great a spread between the two sets of rates.

The particulars of the 1897 Contract may now be set out in so far as they are essential to the problem.

In 1897 the Canadian Pacific Railway Company desired to build a railway from Lethbridge (then in the Northwest Territories and now in Alberta) through the Crowsnest Pass into Nelson, British Columbia, and was in need of financial

assistance for this enterprise. The Government was authorized by Parliament to grant this assistance in the form of a subsidy of \$11,000 per mile of railway built, the subsidy not to exceed in the aggregate the sum of \$3,630,000. The Company in consideration of receiving this financial assistance entered into certain covenants with the Government, three of which related to freight rates. The first of these had to do with the control of certain rates, and will be dealt with further on in this chapter. The others made provision for those rates which became known as the Crowsnest Pass Rates, and are as follows:

"(d) That a reduction shall be made in the general rates and tolls of the Company as now charged, or as contained in its present freight tariff, whichever rates are now the lowest, for carloads or otherwise, upon the classes of merchandise hereinafter mentioned, westbound, from and including Fort William and all points east of Fort William on the Company's railway to all points west of Fort William on the Company's main line, or on any line of railway throughout Canada owned or leased by or operated on account of the Company, whether the shipment is by all rail line or by lake and rail, such reduction to be to the extent of the following percentages respectively, namely:

Upon all green and fresh fruits, $33\frac{1}{3}$ per cent;
 Coal oil, 20 per cent;
 Cordage and binder twine, 10 per cent;
 Agriculture implements of all kinds, set up or in parts, 10 per cent;
 Iron, including bar, band, Canada plates, galvanized, sheet, pipe, pipe-fittings, nails, spikes and horse shoes, 10 per cent;
 All kinds of wire, 10 per cent;
 Window glass, 10 per cent;
 Paper for building and roofing purposes, 10 per cent;
 Roofing felt, box and packing, 10 per cent;
 Paints of all kinds and oils, 10 per cent;
 Livestock, 10 per cent;
 Woodenware, 10 per cent;
 Household furniture, 10 per cent;

"And that no higher rates than such reduced rates or tolls shall be hereafter charged by the Company upon any such merchandise carried by the Company between the points aforesaid; such reductions to take effect on or before the first of January, one thousand eight hundred and ninety-eight;

"(e) That there shall be a reduction in the Company's present rates and tolls on grain and flour from all points on its main line, branches, or connections, west of Fort William to Fort William and Port Arthur and all points east, of three cents per one hundred pounds, to take effect in the following manner: One and one-half cents per hundred pounds on or before the first day of September, one thousand eight hundred and ninety-eight, and an additional one and one-half cents per one hundred pounds on or before the first day of September, one thousand eight hundred and ninety-nine; and that no higher rates than such reduced rates or tolls shall be charged after the dates mentioned on such merchandise from the points aforesaid."

The line of railway was built, the Government paid the Company a subsidy of \$3,404,720, and the Agreement concerning freight rates became fully effective on September 1, 1899.

In the controversy which arose upon the subject of these Crowsnest Pass rates the Commission was asked to give due weight to the advantages, apart from the bare amount of the subsidy, which the company expected to acquire, and did acquire, by entering into this agreement with the Government. It is, of course, certain that the company did not build the railway merely for the sake of the subsidy. The real value of the subsidy was that it enabled the company to construct a line which gave it an all-rail link between its main line and the Kootenay region, and thus assured it of a railway monopoly throughout a large territory believed to be rich, particularly in mineral resources, and which might otherwise have been traversed by American lines. Moreover, the completion of the line entitled the company to a grant from the Government of British Columbia of 250,000 acres of land in that Province; but here it must be noted that, out of this grant, the company agreed to convey, and did convey, 50,000 acres of coal-bearing lands to the Government of Canada.

The effect of the Agreement on the rates payable on shipments of grain and flour may be illustrated in going along by taking as an example the shipping point of Regina on the Company's main line. The rate of shipment from Regina to Fort William in September 1897 was 23 cents per 100 pounds. On September 1, 1899, this rate was reduced, in accordance with the Agreement, to 20 cents. It is 20 cents again today and has so been since July 6, 1922; but in the years between 1899 and 1922 certain changes occurred in the level of this rate which must be recorded.

The rate of 20 cents per 100 pounds from Regina remained in effect from September 1899 until October 1903, when it was reduced to 18 cents. This reduction was made by the Company in order to meet competition in its grain and flour traffic caused by the granting by the Canadian Northern Railway of a rate on these shipments lower than the Crowsnest Pass Rate. This action of the Canadian Northern Company was taken as the condition of a contract between that Company and the Government of Manitoba with which it is not necessary to deal at further length.

This rate of 18 cents per 100 pounds from Regina to the head of the lakes (with, of course, corresponding rates from all other Prairie shipping points) remained in force for a period of about fifteen years, that is until June 1st, 1918, when, the reason for the lower competitive rate having come to an end with the disappearance of the Manitoba-Canadian Northern Agreement above referred to, the Canadian Pacific Railway Company raised the Regina rate back to the 20 cent level authorized by the Crowsnest Pass Agreement.

During the final period of the Great War the necessity of increasing railway rates in Canada forced itself upon Parliament and the country. As a result of greatly increased wage costs, which followed upon the making of the McAdoo Award in the United States in 1918, the Board of Railway Commissioners was directed by the Government to prepare a new schedule of all freight rates and this schedule, providing increases, was made effective on August 12, 1918, by an Order in Council passed under the War Measures Act. The general increase amounted to approximately 25 per cent, and the grain and flour rates were raised above the Crowsnest Pass level, bringing the Regina rate to 24 cents. This suspension of the Crowsnest Pass rates was ratified by Parliament in the Session of 1919 by an amendment to the Railway Act, but the amendment contained a proviso limiting the period of suspension to three years. These three years began to run on July 7, 1919.

The record shows that Parliament's consent to this suspension of the Crowsnest Pass rates and of certain other rates limited at that time by various contracts

was not obtained without considerable discussion. The presentation to the House of Commons explaining the reasons for the suspension was made by the Prime Minister in the following language:

"In view of the enormous increase in the cost of operation due to the increased cost of material and labour we found it absolutely necessary to pass the Order in Council which has been laid down upon the table of the House, enabling rates to be raised, notwithstanding the existence of agreements such as have been mentioned here this morning. We had our choice between the bankruptcy and cessation of operation of the railways and taking that step. There was absolutely no alternative. It was a difficult alternative and we were obliged to act according to our idea of what was best in the public interest."

The statement added that the Chairman of the Board of Railway Commissioners had made it abundantly clear that the Board could not function properly because it could not establish a uniform system of rates throughout Canada if it was restricted, in fixing rates commensurate with the necessity of having the railways operated, by the existence of agreements setting rates over which the Board had no control.

The rate of 24 cents from Regina remained in effect until September 13, 1920, when it was increased to 32.5 cents. On January 1, 1921, it was changed to 31 cents and on December 1, 1921, to 29 cents. Finally on July 6, 1922, the suspension period having expired, it returned to 20 cents, the Crowsnest Pass Agreement level, where as previously stated, it has since remained.

Much confusion existed between 1922 and 1925 as to the interpretation of some parts of the Agreement of 1897, and certain litigation was carried on. No useful purpose would be served here by a narration of these proceedings and it will be preferable not to take time to go into them.

It is in order now to revert to the wording of the two covenants respecting freight rates set out in full above and entered into by the Canadian Pacific Railway Company in 1897. One of these relates to certain traffic westbound in a large number of articles and the other, of which the history has just been traced, to eastbound shipments of grain and flour. It will be noted that the terms of the Agreements place no limitation of time upon the duration of the covenants. In the one case it is stated that "No higher rates than such reduced rates or tolls shall be hereafter charged by the Company", and in the other the words used are "No higher rates than such reduced rates shall be charged after the dates mentioned". As has been said throughout our proceedings, the Company bound itself to maintain these rates "in perpetuity".

But Parliament, of course, has always remained free to legislate in respect to the matters contained in the Agreements, and to make such modifications therein as public policy might seem to require from time to time. It has thus been seen that these rates were increased very considerably for a period beginning in 1918; and the increase applied to both eastbound and westbound traffic.

In 1925 Parliament made a readjustment of these Crowsnest Pass Rates by legislation which altered the position of the Canadian Pacific Railway Company in two respects. In the first place the legislation relieved the Company definitely of its obligation to maintain reduced rates on certain westbound traffic, and since then the rates on this traffic have been and still are subject only to the authority of the Board of Transport Commissioners.

In the second place the legislation extended the Company's obligation respecting eastbound rates on grain and flour by making it apply, not only to traffic moving from points on the Company's lines in existence when the contract was made, as was provided in 1897, but to all the Company's lines west of Fort William whenever constructed.

In addition to its effect upon the position of the Canadian Pacific Railway Company under the 1897 Agreement, the legislation affects all other lines of railway in the West, by making the Crowsnest Pass Rates apply to all traffic in grain and flour moving eastward from points on these lines as well as on the Canadian Pacific lines.

The provision of the Railway Act which deals with the powers of the Board of Transport Commissioners "to fix, determine and enforce just and reasonable rates" is sub-section 5 of Section 325. The legislation of 1925, which has just been discussed, took the form of a proviso to sub-section 5 and a new sub-section 6 which reads as follows:

"Provided that, notwithstanding anything in this subsection contained, rates on grain and flour shall on and from the twenty-seventh day of June, one thousand nine hundred and twenty-five, be governed by the provisions of the agreement made pursuant to chapter five of the Statutes of Canada 1897, but such rates shall apply to all such traffic moving from all points on all lines of railway west of Fort William to Fort William or Port Arthur over all lines now or hereafter constructed by any company subject to the jurisdiction of Parliament."

"6. The Board shall not excuse any charge of unjust discrimination, whether practised against shippers, consignees, or localities or of undue or unreasonable preference, respecting rates on grain and flour, governed by the provisions of chapter five of the Statutes of Canada 1897, and by the agreement made or entered into pursuant thereto within the territory in the immediately preceding subsection referred to, on the ground that such discrimination or preference is justified or required by the said Act or by the agreement made, or entered into pursuant thereto."

In so far, therefore, as statutory limitations, (or what from the shipper's point of view might be called statutory safeguards), are concerned in respect to the rates applicable to shipments of grain and grain products, there are none other than those expressed in the above mentioned legislation, and they apply only to shipments of grain and flour moving eastward to Fort William and Port Arthur from points on all lines of railway West of Fort William. Rates on movements westward or northward, or on products of grain other than flour in any direction, are not mentioned in the Statute. Whatever extensions have been made in these latter respects result from action of the Board of Transport Commissioners or of the railways themselves. This aspect of the subject will now be referred to briefly.

The extent to which the application of these Crowsnest Pass Rates is at present effective has been set out earlier in this chapter in six paragraphs lettered (a), (b), (c), (d), (e), and (f). In nearly all these cases the application goes beyond the express statutory provision in one or more points and is due to action of an "extensive" character taken by the Board or by the railways themselves.

In the first place attention is to be called to paragraph (a). The Agreement of 1897 provided that rates on grain and flour should be kept at a reduction of 3 cents per 100 pounds below the rates then charged from points on the Company's main line, branches or connections. At that time some branch line rates were higher than those of the main line at points equally distant. The 3 cent reduction, when applied to each of these rates, left a disparity between them, and there was nothing in the Agreement or in the legislation of 1925 to prevent the continuance of the disparity, and it did continue until the Board put an end to it in 1927, in response to a complaint made by some branch line shippers. The provisions of paragraph (b) respecting shipments to Westfort and Armstrong and of paragraph (c), which extends the rates westward on shipments to the Pacific ports, were made by final order of the Board in 1927. The extension of the rates to shipments to Hudson Bay (paragraph (d)) was made by the Canadian National Railways, and their extension to certain by-products of the milling,

distilling and brewing industries, and to certain feed products, (paragraph (e)), is due to the action of the railways who decided that they could not reasonably expect to receive a higher rate on shipments of the inferior products of grain than those charged on flour. It has already been stated, (paragraph (f)), that the existence of these rates on through shipments of grain and flour caused the Board to refuse permission to the Railways to apply the recent rate increases to domestic shipments of these articles in Western Canada.

It is apparent from the foregoing that the legislation of 1925 may be said to be only the basis of the present Crowsnest Pass Rate system, because that system has grown in range and substance far beyond the strict provisions of the Statute. It extends now, in respect to these shipments from the Prairies, to all railway territory bounded by the Great Lakes, the Pacific Ocean and Hudson Bay, and carries with it the incidental effects on certain other rates already referred to. This expansion in the application of these rates was inevitable because it appears to have been a natural outcome of the situation created by the Statute. The Board, and the Railways themselves, in 1927 and later, were bound to take action, as they did, to remove the anomalies resulting from the existence of different rates on movements in different directions (and in some cases from different Canadian Pacific Railway points in the same direction), of grain and flour leaving the Prairies for export. It seems altogether probable that the present arrangement, which provides equal treatment to all shippers, will continue to prevail so long as the Statute remains in force.

The Commission has been asked to recommend that the Statute be repealed. This proposal comes in the first instance from the Canadian Pacific Railway Company which says:

- (1) That it is desirable that freight rates without exception should in all respects be subject to the jurisdiction of the Board of Transport Commissioners, and,
- (2) That, while the national policy may require special assistance to producers of grain in Western Canada, such assistance should not be given at the cost of other users of railway services or at the cost of the railways.

It is assumed in this presentation by the Canadian Pacific Railway Company that the Crowsnest Pass rates on grain and flour have always been a burden either upon the railways or upon the shippers and consignees of other commodities.

The Company's assumption in this respect is not borne out by the facts. During the first period in the history of the Crowsnest Pass rates, that is from the coming into force of the Agreement of 1897 up to 1918, these rates cannot be said to have been a burden on anybody. After having been in effect for about four years, they were reduced by the company itself in 1903 to the lower competitive level already referred to which remained in force for about fifteen years, that is, until the competition came to an end in 1918. These competitive rates would have prevailed throughout this long period even if the Crowsnest Pass Agreement had never been made. Then followed the period of suspension ending in July 1922, during which, of course, these Crowsnest Pass rates were not in effect. As to the situation which has prevailed since then, the Canadian Pacific Company's statement says:

"After 1922, however, when the Crowsnest Pass Rates were restored, the probability is that the greater burden imposed by the low level of these rates has fallen upon shippers and consignees of other traffic."

In support of its submission in favour of the repeal of the Crowsnest Pass legislation, the Canadian Pacific Railway Company asserts among other things that:

"Under present conditions the Crowsnest level of grain rates is not compensatory."

No useful attempt could be made to test the accuracy of this assertion within reasonable bounds of time and expense. The problem implies the determination of the costs attributable to the handling of a particular commodity, or the performance of a particular service, by a railway which handles a great variety of commodities and performs services of many kinds. Nevertheless, the Canadian Pacific Railway Company, while admitting the great difficulty of the task, endeavoured to furnish the Commission with an approximation of the cost of transporting the western grain crop. For this purpose a study was submitted by the Company which, it was said, had required in its preparation the application of more than 10,000 man-hours (4 man-years). The year selected for this study was 1948.

It is probable that this study, which the Company's officials prepared with the expenditure of much time and the application of great expert knowledge, contains information which the Company will find valuable for its own purposes. But the difficulty of the task undertaken is shown by the fact that, after applying to the problem the formulae which appeared to them the most appropriate, the Company's experts could arrive at no more definite conclusion than that stated in the Company's brief: "Therefore, while the exact dollar deficiency from the Crowsnest grain rates in Western Canada is not available, it will be seen that it is somewhere between \$13,769,000 and \$16,947,000". And the time taken and the skill employed in arriving at this indefinite result covered the operations of only one year (1948). The study does show a minimum deficit of a high figure; but it is not possible to say what might be the product of the application of some other formulae asserted to be more accurate.

When the Company submitted this study and asked the Commission to find upon the strength of it that the Crowsnest rates are not compensatory, its claim was challenged by counsel for the Prairie Provinces who took the position that, if cost accounting of this sort was to be gone into, they would ask permission to examine the Company's evidence and to make a study of their own covering not only one year, but a much longer period. Since the Company's position was to place the maintaining of the rates in jeopardy on the ground that they are not compensatory, and the Prairie Provinces are interested in having the rates maintained, the claim of the latter to the right to meet the Company's case by having it submitted to expert examination and by setting up their own case in answer to it, could not reasonably be denied. But the determination of an issue of this nature, one of contentious accounting in a matter of great complexity, would have involved the Commission in proceedings of such length and such great expense, that it would not have been in the interests of all concerned to embark upon it. It seems now that the Commission acted properly in making this decision, not only because of the saving of time and expense, but also and principally because, as will appear later on, the determination of the question of whether or not these rates are in fact compensatory is not of essential significance to the proposals the Commission intends to make concerning their future treatment. These proposals should be adopted regardless of whether these rates are or are not themselves compensatory.

In dealing with this subject up to this point the Commission has adopted the language generally used in discussing it and which, by repeated reference to the Agreement of 1897, conveys the idea that the matter is still essentially one of deciding whether or not the Canadian Pacific Railway Company should continue to be bound by a contract which, in its opinion, has become unreasonably onerous. And in the same manner this other idea is conveyed, viz., that the Canadian National Railway Company has been compelled, perhaps unfairly, to apply rates arising out of a contract to which it was not a party.

The present position of this subject, having regard to the many years which have passed and the many changes which have occurred since 1897, and to the attitude which Parliament and the Government have taken in respect to these rates on numerous occasions throughout this long period when reaching decisions affecting national policy, is not as outlined in the above paragraph. It was affirmed on behalf of the Government so far back as in 1925 that Parliament, in dealing with the Crowsnest Pass rates, found itself confronted not with a contractual theory but with a condition. The fact is that the real intention of the amendment of Section 325 of the Railway Act passed in 1925, and already quoted, was to put an end to the Agreement of 1897 as between the parties to it (the Government and the Canadian Pacific Railway Company) and to prescribe instead a statutory stabilisation of certain freight rates binding on all railways, in order to meet a condition then existing, a condition which was foreseen in 1897 and which had come into being during the many years the contract was in force and very largely through the operation of that contract. It seems clear that the reference made to the Agreement of 1897 in the legislation of 1925, and still in the statute, was intended merely to be descriptive of the rates which Parliament was prescribing for use thereafter on all lines of all railways in the area mentioned.

In presenting the aforesaid amendment of the Railway Act to Parliament in 1925 the Minister of Railways and Canals said:

"This Bill is a bold piece of legislation in order to get rid, not only of the Crowsnest Pass Agreement, but of a score of agreements all of more or less importance . . . We are trying . . . to get rid of a number of agreements—and we have a number of agreements on the Intercolonial, some of small importance, some of greater importance—in order to give the Board of Railway Commissioners a fair chance."

The Minister then presented the Bill drafted in the language which is now that of the proviso to sub-section 5 and of sub-section 6 of Section 325 containing the reference to the Agreement of 1897. It is clear from all this that the intention was to terminate the Agreement itself but to adopt the rates which had come into existence under it, and which had come to be known by reference to it, as the permanent basis of charges to be made thereafter on all shipments of grain and flour moving eastward from the Prairies.

In the same year, 1925, and before introducing the legislation just discussed, the Government issued an Order in Council (P.C. 886) directing the Board of Railway Commissioners to investigate the rate structure of the railways of Canada in order to bring about equalization of rates between persons and localities "under substantially similar circumstances and conditions". The wide field of investigation and action opened up to the Board under this Order in Council was limited only by the exclusion from it of the Crowsnest Pass rates on grain and flour. The language of the relevant parts of the Order in Council is as follows:

"The Committee are of the opinion that the policy of equalization of freight rates should be recognized to the fullest possible extent as being the only means of dealing equitably with all parts of Canada, and as being the method best calculated to facilitate the interchange of commodities between the various portions of the Dominion, as well as the encouragement of industry and agriculture and the development of export trade."

"The Committee are further of the opinion that as the production and export of grain and flour forms one of the chief assets of the Dominion, and in order to encourage the further development of the great grain growing Provinces of the West, on which development the future of Canada in large measure depends, it is desirable that the maximum cost of the transportation of these products should be determined and known, and therefore are of opinion that the maximum established for rates on grain and flour, as at present in force under the Crowsnest Pass Agreement, should not be exceeded."

"The Committee are further of the opinion that, before such investigation is undertaken it is essential to ensure that the provisions of the Railway Act in reference to tariffs and tolls, and the jurisdiction of the Board thereunder, be unfettered by any limitations *other than the provisions as to grain and flour hereinbefore mentioned.*"

Direction to the like effect is found in Order in Council 1487 of April 7, 1948, which instructs the Board to proceed towards equalization in terms which are in part as follows:

"... it is therefore advisable that the Board of Transport Commissioners for Canada be directed to make a thorough investigation of the rates structure of railways and railway companies which are under the jurisdiction of Parliament, with a view to the establishment of a fair and reasonable rates structure which will, under substantially similar circumstances and conditions, be equal in its application to all persons and localities so as to permit the freest possible interchange of commodities between the various provinces and territories of Canada and the extension of Canadian trade both foreign and domestic, having due regard to the needs of agriculture and other basic industries."

"The Committee, accordingly, advise that the Board of Transport Commissioners for Canada be directed to undertake a general freight rates investigation along the lines indicated in the preceding paragraph *subject to such special statutory provisions as affect freight rates.*"

The special statutory provisions here referred to are the amendment to the Railway Act in 1925 fixing rates on grain and flour and The Maritime Freight Rates Act of 1927.

This reservation in the Orders in Council accords with the attitude taken by those who spoke for the Government in the debate on the legislation of 1925: That, with the lapse in years since 1897 and the condition which had developed, the contract was no longer between the Canadian Pacific Railway Company and the Government, but between the Government and the people of the Prairies.

Twenty-six years have gone by since 1925; it is now fifty-two years since the Crowsnest Pass Rates became fully effective. The rates on grain and flour from the Prairies have never been higher than those fixed in the Agreement, excepting during the suspension of nearly four years brought on by the imperative necessities of the Great War.

It has been stated earlier in this chapter that the Agreement of 1897 contained in addition to these "Crowsnest Pass Rates" covenants entered into "in perpetuity", another provision respecting the control of certain rates. By this term of the agreement the Canadian Pacific Railway Company consented to a partial waiver of the statutory right which it then enjoyed to impose such rates as it pleased, without control of any kind, so long as its revenues did not exceed what was required to pay dividends of ten per cent on its stock. The Minister of Railways and Canals in introducing the legislation said:

"There is a widespread feeling throughout Western Canada, and I think, shared in by the people of the eastern part of Canada, that the agreement which permits the Canadian Pacific Railway Company to impose such schedule rates as it pleases, so long as it does not show sufficient excess of revenue to pay a dividend of 10 per cent on stock, is a condition of things . . . which is believed to be a very great burden upon the people of the western country, from which for a long time they have hoped to secure some relief."

The Agreement provided in this regard that the local tolls on the proposed railway, and between points on it and points on the company's main line throughout Canada should be under the control of the Government or of any railway commission which Parliament might thereafter set up.

After describing this freight rate concession obtained from the Company the Minister said:

"That is a most important concession, one which I consider worth a very large amount of money, and one which I think the people of the western country will highly value; and if hon. gentlemen who object to this arrangement had been negotiating with the Canadian Pacific Railway Company on the subject, they would be satisfied that the Canadian Pacific Railway people at all events regarded it as a very important concession, that they valued it at a large amount of money, and that they only yielded when they found the Government determined that they should not get any financial assistance from the Government of Canada unless they consented to the terms which we demanded."

These various freight rate provisions of the Agreement of 1897, taken together, were looked upon by Parliament as constituting a measure of great and lasting importance. They were said to be "at once the announcement and the commencement of a new national policy". It was pointed out, in respect to the Crowsnest Pass rates, that their primary intention was to relieve the people then in the West of a grievous burden, with the further expectation that they would induce a great increase in the population of the Prairies and the development of an industry which it was in the interest of all Canada to foster.

The only serious criticism which this announced policy received was that it did not take enough from the Company to compensate for the valuable monopoly which the company was receiving and that the reduction of 3 cents per 100 pounds on grain and flour was too small in comparison with the lower rate then being negotiated by the Government of Manitoba with another railway company. This is the lower rate which became effective upon the completion of the other line in 1903 and which caused the Canadian Pacific Railway Company to reduce its Crowsnest Pass rate in order to meet the competition.

Since 1897 Western Canada has grown and has become the great economic factor in our national life that its own people and the Government and Parliament of Canada foresaw in 1897. The great increase in the population of the Prairies and the remarkable development of its grain growing industry since that time have been accompanied and fostered throughout the years by the assurance of permanency in the important factor of transportation rates to world markets.

These rates have been criticized on the ground, among others, that they are now out of relationship with the price of wheat, having regard to the comparatively high price at which that commodity is now selling. The price of wheat varies greatly according to world conditions. In 1897, when the Agreement was concluded, it was 99 cents per bushel. In 1899 it was 70 cents per bushel. In 1932 it averaged less than 55 cents per bushel. For the last five-year period which ended on July 31, 1950, farmers were paid \$1.75 per bushel. In 1922 and again in 1925, when Parliament confirmed its control of grain and flour freight rates, prices were in a range of \$1.50 to \$2.00 per bushel. If any relationship can be said to exist between prices and rates, the action of Parliament on these occasions must mean that this relationship was considered to be on a fair basis at these prices.

Whatever the price of wheat may be, the greater part of the crop has to make the long voyage each year to faraway markets. And in leaving the Prairies it travels by railway; no other transportation agency is available to it.

For many years now it has been a recognized factor of Canadian transportation policy that the hardships arising from our necessarily long east-and-west railway haul have been tempered along the way by four great measures of relief: The Maritime Freight Rates Act in the Atlantic Region, the toll-free canals in Central Canada, the competitive transcontinental railway rates at the Pacific coast, and the Crowsnest Pass rates in the Prairies.

It is interesting to note in this regard how conditions have altered in recent years. In the parliamentary debate of 1925 already referred to, water competition was held up as the great transportation advantage enjoyed by Central Canada in comparison with the Prairies. Nothing was said about the motor truck. This new factor in transportation was close at hand at that time but had not yet begun to make itself felt as a competitor to the railways. Its growth since 1925 has been remarkable and has forced the railways to make widespread reductions in their freight charges in Ontario and Quebec.

It will be of value at this point to summarize the views which were expressed before the Commission concerning the future of the Crowsnest Pass rates by provincial governments and by various organizations and individuals who dealt with the subject.

The following favour the retention of the statutory control of these rates:
The Governments of Manitoba, Saskatchewan, Alberta and New Brunswick;
The City of Winnipeg and the Winnipeg Chamber of Commerce;
The Manitoba Federation of Agriculture and Co-operation;
The Alberta Federation of Agriculture;
The Transportation Commission of the Maritime Board of Trade;
The Fort William and Port Arthur Chamber of Commerce;
The Canadian Federation of Agriculture;
The Canadian Congress of Labour;
The Wheat Pools of Alberta, Saskatchewan and Manitoba;
The United Grain Growers;
The Chambers of Commerce of Calgary and Edmonton;
Mr. E. J. Young, a former director of the Canadian National Railways.

Among those named above as being in favour of the retention of statutory control of these rates the following had certain additional observations to make:

The Government of Manitoba says that, whether a subsidy should be paid to the railways as compensation for a deficiency in the rates or whether these rates should be increased at any time, are questions for the future. They can be dealt with by Parliament when they arise;

The Government of Saskatchewan says that if the rates are not compensatory some remedial action should be taken. If a subsidy is decided upon, such subsidy should be paid to the railways;

The Government of Alberta says that grain should not be carried at a loss. If there is a loss the rates should be kept as they are and a subsidy paid to the railways on the principle of the Maritime Freight Rates Act. Alberta does not contend that these rates must remain forever unaltered, but says that Parliament alone should have power to alter them;

The Government of New Brunswick says that any losses incurred by retention of the rates should be met by a subsidy to the railways;

The Transportation Commission of the Maritime Board of Trade favours the payment of a subsidy to the railways to meet possible losses.

The Governments of Nova Scotia, Prince Edward Island and Newfoundland made no statement whatever regarding the Crowsnest Pass rates. The Government of British Columbia made no specific reference to these rates, although their general attitude as to "subsidizing industries" may have some bearing on the matter involved. Their statement is that if any industry requires assistance this should be provided otherwise than through concessions in freight rates.

The following expressed themselves as being opposed to the retention of the Crowsnest Pass rates by statute:

- The Vancouver Board of Trade;
- The British Columbia Fruit Growers' Association;
- The British Columbia Paper Manufacturers and Converters;
- The British Columbia Feed Manufacturers' Association;
- The Canadian Industrial Traffic League;
- The Canadian Pacific Railway Company.

Some of those just named as being opposed to the retention of these statutory Crowsnest Pass rates qualified their statement as follows:

The British Columbia Paper Manufacturers and Converters say that the Crowsnest Pass rates should be reviewed and that if necessary some form of subsidy should be provided;

The British Columbia Feed Manufacturers' Association, while opposed to statutory rates, believe that the Crowsnest Pass rates contribute a "fair share" to the railways;

The Canadian Industrial Traffic League says that if these Crowsnest Pass rates are to remain as they are, normal rates should be determined and the difference made up to the railways by subsidy.

The Canadian Manufacturers' Association says that all traffic carried on non-statutory rates must make up for the deficiency which the Association believes to exist in Crowsnest Pass rates. The remedy suggested is to apply the principle of the Maritime Freight Rates Act to the Crowsnest Pass rates.

The attitude of the Canadian Pacific Railway Company has already been set out in full. The Company favours a repeal of the statute and the payment of a subsidy to the grain growers if they need assistance.

The Canadian National Railway Company says that there is "some merit" in having all rates placed under the control of the Board; and that an examination should be made of what revenue rates are producing and what benefits particular regions are receiving from them. The Company refers to a statement in the Report of the Sirois Commission which says that western grain is carried at unremunerative rates.

The question now to be decided is whether or not the Commission should recommend the repeal of the statutory control of these Crowsnest Pass rates. This repeal would mean that rates on these shipments would be dealt with henceforth in the same manner as all other rates, viz. by the railways and the Board of Transport Commissioners. In such case, the Maritime Freight Rates Act would remain as the only statutory measure of national policy in regard to freight rates affecting the people and industries of a particular region of Canada.

The conclusion which commends itself to the Commission is that the time has not come for Parliament to divest itself of the immediate control of these rates which it assumed in 1897. Such a time may come later with the evolution of the country's economic position, but it seems certain that it has not yet come in this case. On the contrary, it would be against the national interest at this moment, in view of the uncertainties which exist in world affairs, and consequently in world market prospects, to subject this great export industry to the disturbance which the abandonment of statutory protection would undoubtedly cause. This abandonment would mean that Parliament no longer looks upon Western Canada's production of grain for export as an industry requiring special consideration in the national interest. There is no doubt that the effect of such a measure at this time would be particularly unfortunate.

What would be the immediate result of repeal? The Canadian Pacific Railway Company says (1) that the Board of Transport Commissioners would fix the new grain rates after "a most thorough and detailed study", and (2) that relief would thereby be given to the shippers and consignees of traffic who, it says, carry the extra expense of the benefit which the Crowsnest Pass rates confer upon the western grain growers.

The suggestion that the Board would fix the new rates on grain and flour would mean, under present conditions, that these rates would be dealt with by a body whose duty, as defined by itself, is to fix and adjust rates "regardless of geographic or economic conditions", because it is concerned, as it has said, "simply and wholly with the question of the reasonableness of the toll which the railway company is seeking to collect for the carriage of a given commodity irrespective of how it is made or whence it comes". (This subject has been gone into at length in the chapter on "Economic, Geographic and Other Disadvantages of Certain Sections of Canada").

The Commission does not believe that the time has come to deal with this great export industry without regard to considerations which the Board cannot apply. If it is suggested that in this case Parliament might give special directions to the Board, the answer is that the result of such a procedure would likely prove unsatisfactory. So long as planning of any sort is called for in regard to these rates it had better continue to be done by Parliament itself.

In concluding what is to be said on this branch of the subject, it will be useful to make the following quotation from the brief presented by the United Grain Growers Limited. This is a statement with which the Commission finds itself in agreement, and it summarizes the main considerations which have come under review in arriving at conclusions:

"By way of summary, our position is that continued Parliamentary control of export grain rates in Western Canada to the lake-head and to the Pacific Coast is necessary. That fact arises from the special nature of the business of growing grain for export and from its relation to the economy of the West and to that of all Canada. There are further important considerations, including the fact that the wheat-growing industry is vulnerable to world conditions beyond Canadian control. The grain rates in question are a direct levy upon the farmer which he is incapable of transferring to others. Those rates are not, and cannot be, held down by the influence of competition from other forms of transportation or by the influence of the principle of 'what the traffic will bear,' both of which are highly important in connection with other freight rates. The development of the grain-growing industry and of the Prairies generally has been a matter of continuing national policy. Such policy, first covered by a solemn contract willingly entered into by Canadian Pacific, has been embodied in legislation passed and repeatedly confirmed by Parliament. To abandon statutory control and to place these rates under the jurisdiction of the Board of Transport Commissioners would be to prevent their regulation according to the principles of a national policy which has been the basis of the development of Canada for half a century."

In expressing the opinion that these Crowsnest Pass rates should remain in their present position what is meant is only that they should remain under the immediate control of Parliament. It cannot be said, and nobody has asked that it should be said, that their present level must never be changed. None of those who oppose repeal have asked for any more than that Parliament's control should continue and that Parliament itself should make whatever changes in these rates, upward or downward, it may appear just and reasonable to make as time goes on.

It will be in order to turn now to the assertion that these rates have become a hardship on other shippers and consignees because these latter are called upon to stand the full effect of increasing freight charges without contribution from those who have the benefit of these fixed Crowsnest Pass rates.

It has been seen that there are two special statutes in Canada governing freight rates, both intended to provide a measure of assistance to particular regions: one is the Maritime Freight Rates Act and the other is the legislation of 1925 concerning these Crowsnest Pass rates. The first of these two statutes is intended to give certain advantages in rates to all persons and all industries in the Maritime Provinces and the other territory therein described; the other is of benefit only to the producers of grain in the Prairie Provinces. They differ from each other in several respects, but principally in this: that the Maritime Freight Rates Act maintains the freight charges payable by the shipper at a level of approximately 20 per cent below the rates existing on July 1, 1927, but with the provision that these basic rates may be increased or reduced by the Board from time to time to meet increases or reductions in the cost of railway operations. (In discussing the Maritime Freight Rates Act, it is to be borne in mind that reservation must be made of whatever legal implications may arise from the provisions of Section 8 of that Act.) There is no such provision in the statute governing the Crowsnest Pass rates. The result of this difference between the two statutes is that freight rates in the Maritimes have had to bear their share of the general increases granted in the last three years totalling 45 per cent, while the Crowsnest rates have borne no part of them. It is pointed out that, if the Crowsnest Pass rates had been made to bear a proportionate share of these increases their total would have been much less than 45 per cent, probably about 38½ per cent. This conclusion is arrived at by following the calculation made by the Canadian Pacific Railway Company in its brief which was filed in October 1949, after the first increase of 21 per cent, where it is said:

"That the burden of the low level of grain rates at present rests mainly upon the shippers and consignees of other than grain traffic can be demonstrated by reference to the Board's Judgment in the 21% Case. At page 66 of the Judgment (XXXVIII J.O.R. & R.) the Board found the deficiency in revenue of the Canadian Pacific at something more than thirty million dollars. This additional revenue had to be derived by an increase in rates on traffic having a revenue value to the Canadian Pacific of slightly more than \$137,000,000 and the resulting increase was therefore 21%. If it had been applied also to grain traffic the increase would have been applied to a total of approximately \$170,000,000 of traffic and the resulting increase would have been only about 18% instead of the 21% allowed by the Board on the formula it adopted."

It follows, therefore, that, if these rates are to remain under the control of Parliament, the next question which arises is: What should be done to remove any unfairness they may create in respect of other shippers? Here two suggestions may be considered. One of these is to be found in the proposal made by the Canadian Pacific Railway Company to which reference has already been made in another connection, viz. that an investigation take place to determine whether or not these rates are compensatory, and that new rates be fixed in accordance with the result of the investigation. This is the sort of investigation which the Commission declined to undertake at the hearings for reasons already given. It cannot be said that it is altogether impossible in the ordinary case to determine the adequacy of a particular rate in respect to the service to which it applies, although admittedly the task presents considerable inherent difficulty. But in the case of the Crowsnest Pass rates the investigation would be involved in such a mass of contention, affecting particularly the position of the Canadian Pacific Railway Company (this was made plain at the sittings) that even an expenditure of much time and money would probably produce an altogether unsatisfactory result.

The second suggestion arises out of what has just been quoted from the Canadian Pacific Railway Company's brief regarding the incidence of general increases. It means that provision should be made to have these Crowsnest Pass rates bear their proportion of general freight rate increases as in the case

of the rates fixed by the Maritime Freight Rates Act. In this manner they would have been increased in 1948 by 18 per cent according to the calculation made by the Canadian Pacific Railway Company, and all other rates would likewise have taken an 18 per cent, instead of a 21 per cent, increase.

If this second suggestion were adopted, the final question remaining to be answered would be, who is to pay the difference between the basic rate level and the amount added by the increase, that is, should the burden of the increase fall upon the shippers of grain and flour or should it be borne by the treasury of the country in the form of a subsidy? If it is by subsidy, the subsidy should be paid to the railways, as is the case under the Maritime Freight rates Act.

Much time has been taken to consider whether it has been established that the Crowsnest Pass rates, hitherto exempt from the burden of general freight rate increases, should now be made subject to them. As above stated, the removal of this exemption is asked for principally on the ground that it casts an unfair burden on shippers of other commodities. This argument seems plausible in theory but an examination of all the facts involved shows that it is not well founded. It is true that the Crowsnest Pass rates are a benefit to the shippers of grain and flour in Western Canada. In so far as the shippers of other commodities in that region are concerned they do not complain of any undue hardship by reason of the exemption in question. From all that was said before the Commission it can be inferred, on the contrary, that these shippers would rather continue to bear whatever additional increase is required in their rates (for instance the difference between 18% and 21%) than disturb the immunity of the rates on grain and flour. The shippers in the Maritimes on the whole are fairly well satisfied with the special treatment they enjoy under the Maritime Freight Rates Act in its present form, and their representative before the Commission did not join in the suggestion that the Crowsnest Pass rates should be affected by general freight rate increases. Shippers in Central Canada are in such an advantageous position in comparison with those of the West as to make it clear that they require no relief under existing conditions. The Railway Association of Canada estimates that the railways are losing at least \$50 million annually as a direct result of the competitive rates which they put into effect in order to meet truck competition. This means that without this competition the shippers concerned, of whom the great majority are in Central Canada, would be called upon to pay normal rates very much higher than those now in force. There is nothing in their case that can be called a hardship.

On the whole therefore no justification can be found for the statement that the exemption of the Crowsnest Pass rates causes an undue burden upon shippers as a whole or upon any particular class of shippers. The application made for their increase based upon this argument cannot be entertained.

There remains the question of the railways themselves. Is there any reason why they should be indemnified against whatever additional burden they may suffer by reason of this exemption from increases of the Crowsnest Pass rates? It is not easy to see what case can be made out for them in this respect. If the Crowsnest Pass rates were made subject to general increases the ratio of the increases would go down. In any case the statement made by the Canadian Pacific Railway Company is to the effect that "since 1922 the greater burden of the Crowsnest Pass rates deficiency is borne by other shippers". This statement implies that there is really not much to be said against these rates in respect of their effect upon the railways.

As to the general question of government assistance to the railways (in respect to which subject the word "subsidy" has usually been used) the only recommendation to be made in this report is that found in Chapter XI "The Rail Link Between East and West".

CHAPTER XI

THE RAIL LINK BETWEEN EAST AND WEST

Various submissions were made to the Commission as to steps which ought to be taken to lessen the burden of freight rates for the Western Provinces whose geographical location necessitates a haul of traffic inwards and outwards over a long stretch of unproductive or only partly productive territory. This report deals in another chapter with the subsidy proposal put forward on behalf of the Government of Saskatchewan which does not appear to provide the proper approach to the problem. In the brief submitted by the United Farmers of Alberta Co-operative Limited the following statement is found:

"Canada is a country of two areas of civilization separated by a relative economic desert. We suggest that in all service given to the people of Western Canada by the transcontinental railway systems some formula should be introduced into the charges that has regard for the political considerations to which we have referred, subtracting a percentage of the operating costs entailed by unprofitable miles traversed between Sudbury, say, and the head of the lakes, and covering that deduction by subsidy from the national treasury so long as such subsidy can be shown to be necessary."

This statement seems to place the problem more nearly in its proper light. Language of similar import is found in the resolutions adopted in 1948 by the national conventions referred to in the chapter on Economic and Geographic Disadvantages, where it is said, in the one case, that "discrimination between the several geographic areas of the Dominion" should disappear, and, in the other case, that "The overhead cost of linking East and West together has been a matter of national concern from the earliest days".

It is the existence of this necessary link between Canada's two vast areas that must be recognized. It is called for, not only by the requirements of the exchange of goods for commercial purposes, but also by those of our national defence structure. The problem presented is that of maintaining this link so long at least as it does not provide sufficient revenue for its own maintenance. This problem concerns the whole country and not only its western portion, and the responsibility for its solution should be assumed by the nation as, for instance, in the case of the maintenance of our canal system.

It would appear suitable, in these circumstances, to provide that the cost of maintaining that portion of our transcontinental railway system which serves as a link or bridge between East and West be charged upon the general revenues of the country. This arrangement would reduce the expense of the railways by relieving them of a liability for which at present they have to recoup themselves by means of relatively high freight charges on the through traffic passing over this bridge between the two areas.

The submission of the United Farmers of Alberta Co-operative Limited above set out refers to the expense which ought to be borne by the Federal treasury as "a percentage of the operating costs" incurred by the mileage traversed between Sudbury and the head of the lakes. There is really no practical difference between the idea expressed in that formula and the measure recommended here which is intended to attain a similar result by the application of another formula, that of charging the general revenues of the country, not with any part of the actual cost of operating trains in this middle area, but with the whole cost of maintaining the bridge over which the traffic between the two large areas must pass, just as the toll-free canals in Central Canada are maintained at public expense for the passage of traffic through them.

The trackage between Sudbury and Fort William on the main line of the Canadian Pacific Railway Company constitutes that company's "bridge". A corresponding extent of trackage on the Canadian National Railways' "bridge" should also be provided for.

If this proposal is adopted a number of details concerning its application will have to be worked out between the government authorities and the railways. A rough estimate of the cost of maintaining this link between East and West makes it appear that the liability taken over by the Treasury will be approximately \$7,000,000 annually.

It is expected that the assistance herein provided will be particularly effective as a measure of relief in the case of charges on westbound traffic passing over this bridge. The Crowsnest Pass rates structure provides to a considerable extent, although of course not altogether, for the requirements of traffic east-bound.

CHAPTER XII

RELATIONS BETWEEN RAILWAY COMPANIES AND EMPLOYEES

The submissions to the Commission on the subject of wages to railway employees were most general in character. The Province of Manitoba said that these wages should be "looked into". The City of Winnipeg and the Winnipeg Chamber of Commerce said they should be "investigated". The Manitoba Federation of Agriculture said that wage increases should be "scrutinized". The Alberta Dairymen's Association made reference to the fact that the Board has no jurisdiction over the "largest single item of operating expenses" of the railways. The Canadian Federation of Agriculture stated that railway employees are the best paid workers in Canada and suggested that the Board should have power in hearing applications by the railways for rate increases to examine whether improvement in the efficiency of railway operations had followed wage increases. Other briefs suggested that the railway employees were receiving higher average pay than the employees of other industries and that the Commission should study the propriety of these wages.

The Canadian Congress of Labour represented that railway freight rates must be sufficient to enable the railways to pay proper wages and that there should be an obligation on the Board of Transport Commissioners to see that this object is attained. They said that railway freight rates should be high enough to ensure proper wages to employees and a proper return to the railways on their investment. The International Railway Labour Organization said that it does not believe that the Board of Transport Commissioners should exercise any authority over wages.

The spokesman for the Brotherhood of Railroad Trainmen said that wage rates on Canadian railways are approximately 20 to 25 cents per hour below those on American railways and made the statement that: "there cannot be full satisfaction of the employees' views and demands until the Canadian-United States parity is restored." This last reference is to the substantial parity which existed between 1918 and 1922 by reason of the McAdoo Award.

The wage disbursements of a railway company is a significant item in its operating costs. In 1949 the ratio of wages to operating expenses was 56.5% in the case of the Canadian Pacific with a payroll of \$202,700,000 and 59.5% in the case of the Canadian National with a payroll of \$284,500,000.

RELATIONS BETWEEN COMPANIES AND EMPLOYEES

In the ordinary course of business, relations between railways and their employees in respect of their reciprocal obligations, including wage questions, are the same as in the case of other industries. Special regulation of industrial relations, intended to define and govern the respective rights and duties of employees and employers and to provide a procedure for the settlement of their disputes, is set up in The Industrial Relations and Disputes Investigation Act, 1948. This Act deals mainly with such subjects as (1) the right of employers and employees to organize for the protection and advancement of their respective interests; (2) the prevention of unfair labour practices; (3) collective bargaining and collective agreements; (4) strikes and lock-outs; (5) conciliation proceedings, and (6) industrial inquiries directed to the maintenance of peaceable relations between employers and employees and the promotion of conditions favourable to the settlement of disputes.

The Act provides that the Minister of Labour shall be charged with its administration and creates and defines the powers and duties of the Canada Labour Relations Board as a successor to the Wartime Labour Relations Board which was established in 1944.

The object of the Act is to preserve the ordinary rights of employers and employees in industry, directing and limiting them only in so far as is necessary to secure just and reasonable conditions of employment and to promote the speedy settlement of disputes in the interest of the parties primarily concerned and of the public whom the industry serves.

In the matter of strikes and lock-outs the Act imposes no obligations on the parties which would, in the long run, deprive the employer of the right to declare a lock-out or the employees of the right to go on strike. The Act merely enjoins a reasonable delay in the exercise of these rights by setting up a procedure which the parties must follow and which must be allowed to complete its course before the strike or the lock-out can take place.

When the dispute has come to a head a conciliation board is appointed whose duty it is to endeavour to bring about agreement between the parties. After the completion of its proceedings the Board, either unanimously or by a majority of its members, reports its findings and its recommendation to the Minister. If both parties accept the recommendation of the Board by agreement in writing, it becomes binding on them. If either declines, the attempt to settle the dispute has failed and both parties become free to exercise the rights held in abeyance during the course of the proceedings. The strike or lock-out will then take place unless, of course, the parties, spontaneously or by mediation, effect a settlement on some other basis.

RECENT EXPERIENCES

In the winter of 1948, a demand for a wage increase by railway employees led to the appointment of a Conciliation Board. The Board recommended an increase which was less than the employees had asked for and which they rejected. A strike was declared for a future date and there was no legal impediment to its taking place. Before the date arrived mediation was undertaken on the initiative of the Minister of Labour in the interest of the public. The wage demand was for an increase of 35 cents per hour. The Conciliation Board had recommended an increase of 7 cents. As a result of the mediation an increase of 17 cents per hour was agreed upon by the railways and the workers, and the strike was averted.

In the summer of 1950 a similar situation arose. Another wage demand was followed by the appointment of a Conciliation Board, the Board made a recommendation which the employees rejected, and a strike date was set. Again mediation was initiated by the Minister of Labour. This time the mediation failed and the strike took place.

The effect of the strike was calamitous. The truck, the bus, and the plane, put forth a great effort of relief. But the Canadian people realized at once that the economic life of this country of great distances is dependent upon the service of the railways. Parliament was called into special session and emergency legislation was passed directing the resumption, within 48 hours, of railway transportation services by the companies and by their employees. The government stated that the purpose of the legislation was to deal with the national emergency then existing, and that it was not intended to provide a permanent procedure for the handling of relations between the railway companies and their employees.

The companies and the employees complied with the emergency Statute and railway operations were resumed. The strike had lasted from the 22nd to the 30th day of August. The differences outstanding between the parties were then settled by an arbitrator appointed under the provisions of the legislation.

SUGGESTIONS FOR THE FUTURE

As appears from the foregoing, relations between railway companies and their employees have been governed by the same rules as those which prevail in the case of all other industries within the jurisdiction of the Parliament of Canada. It has been suggested that a change be made and that a new scheme of regulation in these matters be set up by statute.

The principal suggestion made for the handling of railway wage questions is founded on the postulate (1) that wages are a major item of railway operation costs consuming as they do over 50 per cent of the earnings of the companies, (2) that these earnings consist of revenue derived from rates paid by shippers, (3) that therefore the real conflict in rate and wage disputes is between labour and the shippers, (4) that, in consequence of all this, railway wage negotiations should be conducted by a body upon which the shippers are represented, either by a person nominated by shippers' organizations or by a member of the Board of Transport Commissioners acting in their interest.

Railway operations, by their very nature, require a great expenditure of manpower. Whether the use of manpower is greater in the case of railways than in that of other industries whose output of goods or services might be measured with the output (transportation) of railways, is a question which has not been determined. No information on this subject was furnished to the Commission probably because of the difficulty which would be encountered in trying to build up a fair comparison. But the argument founded on the volume of labour involved in railway operations seems to intimate to railway employees that, because there are so many of them, they should agree that the principal factor in fixing the exchange value of their labour should not be its real money value, as in the case of other workers, but rather the compensation which the "consumers", of what they help to produce, can be brought to agree upon; that in effect these consumers (the shippers) are their employers and not the companies who engage them and regulate their work.

Although all industries must depend for their revenue on the sale to the public of the fruit of their production, the Commission knows of no other industry whereof the workers are asked to assume the position here assigned to railway employees; where they are required to bring their wage demands, not to the company for which they are presumed to be working, but to the consumers of the article (transportation) which the company produces, in part by their labour, and offers for sale. The consumers of coal, of clothing, of automobiles and probably of all other industries, have no such voice in the fixing of the wages of miners, of textile workers, of the employees of car factories, etc. It may well be imagined how the enforcement of such a peculiar doctrine in the case of railway employees would lead in course of time, (if it led to nothing worse) to the desertion of that industry by the labour element of the population.

At the same time railway employees themselves must bear in mind that they have a common interest with the companies in keeping the cost of operation within limits which will enable the railways to compete on a fair basis with other transportation agencies.

It is a further consequence of the above doctrine of shipper-participation in the fixing of the wages of railway employees, that these same shippers would continue to have nothing to say in regard to the other items of expense which the companies incur in the course of their operations and which enter also into the cost which must be met by rates. These other necessary ingredients of operation would continue, as is the case today, to be purchased by the companies at their market price notwithstanding their effect on the sum of the freight rates paid by the shippers. The "purchase" of labour only would be subject to the approval of the "consumers".

The foregoing suggestion goes on to recommend that a larger wage-fixing body than the present Conciliation Board provided by statute be set up to deal with railway wage demands and that the findings of this body be made binding upon all concerned. In effect this is the procedure of compulsory arbitration. It is then said, however, that if the principle of compulsory arbitration should be found too drastic, another procedure should be set up which would meet a situation of wage demands on the one hand and the opposition of shippers' interests on the other, by recommending the payment of government subsidies to satisfy the demands wholly or in part. The body empowered to make this recommendation would be the Board of Transport Commissioners or another body upon which that Board would be represented by one of its members.

It would be a grave mistake to impose upon the Board of Transport Commissioners the duty of fixing or of taking part in the fixing of the wages of railway employees or of recommending subsidies to be paid by the Government. The duty of the Board of Transport Commissioners is to fix just and reasonable rates, that is just and reasonable in respect to the carriers on the one hand and the shippers or consignees on the other, for the service performed. It would be impossible for them to perform this duty adequately if these extraneous questions of the fixing of railway wages and the recommending of subsidies were mixed with it.

No special legislation should be passed for the handling of railway wage disputes and the prevention of strikes or lock-outs. Legislation of the kind suggested would be highly provocative and in practice ineffective. It would settle nothing and encourage dangerous agitation. The railway industry should continue to be governed in this respect by the provisions of the Industrial Relations and Disputes Investigation Act as in the case of all other industries regulated by Federal authority.

The strike of 1950 is the first general railway strike in Canada's history, that is in all the 83 years since Confederation. It has served one good purpose in that it has made all Canadians, railway officers, railway employees and citizens in general, realize what a disastrous occurrence such a strike is. We are not likely to have another such experience in the near future. The best thing to do now is to leave the situation as it is in so far as legislation is concerned. If another similar emergency ever occurs it will have to be dealt with by those in charge of national affairs at the time of the occurrence.

CHAPTER XIII

AIR TRANSPORTATION

Civil aviation is governed by the provisions of the Aeronautics Act, Chapter 3, R.S.C. (1927) as amended in 1944, 1945, and 1950. Part I of the Act deals with the technical side of civil aviation comprising matters of registration of aircraft, safety and control of aerial navigation, provision and administration of facilities for air navigation and the qualifications and licensing of airmen. This Part is administered on behalf of the Minister (Transport) by the Air Services Branch of the Department of Transport.

Part II of the Act deals with the social and economic aspects of commercial air services. The Air Transport Board which administers this Part adjudicates on applications for licences to operate commercial air services and exercises economic control over the operation of air services which it has authorized. The Board is also called upon to advise the Minister in the exercise of his duties and functions under the Act in all matters relating to civil aviation.

No specific complaints were laid before the Commission with respect to air transportation. Representations were received from the Mid-West Metal Mining Association, the Canadian Airlines Pilots' Association, the Maritime Board of Trade, the Province of Prince Edward Island, the Prince Edward Island Boards of Trade, the Canadian Industrial Traffic League, the Province of Newfoundland, Eastern Provincial Airways Limited, and the Canadian Pacific Railway Company, which stressed the importance of air transportation in general; some dealt with regional problems, e.g. in Newfoundland, the Maritime Provinces and northern parts of the country; special questions were also raised.

Suggestions and recommendations made may be summarized under the following headings:

(a) *Airports*

It was submitted:

(1) That additional airstrips should be constructed in northern areas to provide better air transport between mining localities and commercial centres;

(2) That the facilities at alternate and supplementary international airports in the Maritime Provinces should be improved in order that trans-Atlantic traffic may be handled more expeditiously at these airports when, because of weather conditions, aircraft cannot land at the regular international airports of Gander and Goose Bay;

(3) That the airport at Charlottetown should be improved to permit the use of larger aircraft for the transportation of certain agricultural products and fresh fish (especially lobsters) to points in the United States and the Provinces of Quebec and Ontario;

(4) That landing strips should be constructed in King's County in Prince Edward Island;

(5) That consideration should be given to the possibility of building landing strips at Bonavista, Grand Falls, Corner Brook, and Burgeo in Newfoundland;

(6) That commercial operators should be permitted to pick up and set down traffic at the American air bases of Argentia and Stephenville, Newfoundland; and

(7) That air operators should be required to bear an increasing portion of the cost incurred by the Government in operating facilities for civil aviation.

(b) *Granting of Federal Financial Assistance*

It was suggested that federal financial assistance be granted:

(1) To assist the Canadian aircraft industry in research and development work;

(2) To assist air carriers in establishing an air cargo service between Prince Edward Island and Newfoundland to supplement coastal shipping services during the winter season and in cases of emergency; and

(3) To assist air carriers in establishing adequate air services within the Province of Newfoundland (through the granting of air mail subsidies).

(c) *Competition*

It was said that the policy of the Government in preventing competition between points named on the same scheduled licensed route of an air carrier may not always be in the public interest.

(d) *Operation of Commercial Air Services owned or controlled by Surface Carriers*

Opposition was voiced against the policy of restraining railways in the operation of commercial air services.

(e) *Royal Canadian Air Force*

It was stated that the Royal Canadian Air Force has provided free air transportation in cases which ought to have been handled on a commercial basis, thus depriving air operators of much needed revenue.

CONCLUSIONS

The above suggestions and recommendations must be considered in the light of the policy and practice presently followed.

(a) *Airports*

Our airport system is composed of main line airways systems and of secondary airports. A main line airways system requires (i) terminal and principal airports complete with lighting and approach systems and buildings; (ii) intermediate airports complete with lighting and range at about every one hundred miles; (iii) emergency lighting facilities; (iv) radio aid to navigation including communication systems; and (v) meteorological services.

The policy with regard to airports forming part of the main line airways systems may be stated briefly as follows:

(1) Wherever possible, existing municipal airports are used and financial assistance is provided to bring them up to and maintain them at the required standard;

(2) Where there is no municipality or where the municipality is unable to participate financially or is not interested, the Government constructs and maintains the airports; and

(3) The Government has assumed the entire responsibility for the construction, operation and maintenance of all radio aids to navigation on all main line airways systems.

The provision of adequate facilities at airports forming part of the main line airways system is within the jurisdiction of the Department of Transport. At international airports where facilities for customs clearance must also be provided, the Department of Transport acts in co-operation with the Department of National Revenue. The provision of adequate facilities at both domestic and international airports is a matter for the attention of the Department of Transport and the Department of National Revenue and representations should be directed to these departments.

Financial assistance is granted for the establishment of secondary airports where such airports are deemed necessary to promote the development of natural resources. In considering applications for granting of federal financial assistance the following factors are taken into consideration: (i) the volume of local potential traffic; (ii) the availability of other means of transportation; (iii) the advantages to be derived from the existence of an air service, and (iv) the cost of providing the airfield for which assistance is sought. An interdepartmental committee was established about one year ago for the purpose of studying proposals of financial assistance for the construction of additional airports in northern areas.

With regard to submissions concerning air transportation in Newfoundland information shows that the matter is under consideration by the Air Transport Board and the Department of Transport. As to the exercise of traffic rights by commercial operators at the American air bases of Argentia and Stephenville, this is a matter which must be dealt with through diplomatic channels between the governments of the two countries.

The submission that air transportation should bear an increasing portion of the cost incurred in providing operating facilities raises a question for administrative decision and not for any recommendation by this Commission. According to information, air carriers are required to pay landing fees and requests have been made for a reduction in these fees. It must be noted that considerations of national defence, implementation of international obligations and the provision of facilities used by other than commercial operators have contributed to an increase in the expenditures involved in the establishment and maintenance of air transportation facilities.

(b) *Granting of Federal Financial Assistance*

The suggestions relating to this subject are of either national or government policy upon which no useful recommendation can be made.

Financial assistance has been granted to develop the Canadian aircraft industry and to design new types of aircraft or to improve existing designs, and Canadian firms are now building aircraft pursuant to agreements with the Government.

Up to the present time commercial air services in all parts of the country have been established and maintained without direct subsidies. Departure from the established practice may be warranted in certain cases, but decision must be made by the Government after consideration of all factors involved.

Airmail contracts are granted as a result of negotiations between the Post Office Department and the air carrier. Subsidies to air services through airmail contracts is again a matter of Government policy.

(c) *Competition*

Under present conditions the policy followed with regard to competition over scheduled routes appeared well conceived. In order that the public may continue to enjoy the advantages of regular air services, operators of such services must be assured of all the traffic offered between the points which they serve. However, the Air Transport Board has made some exceptions to the established policy and has permitted competition when satisfied that such competition would not unduly prejudice the scheduled operator.

(d) *Operation of Commercial Air Services Owned or Controlled by Surface Carriers*

The Aeronautics Act provides that no licence shall be issued in respect of commercial air services owned, controlled or operated by any person who is engaged in the transport of goods or passengers for hire or reward by means other than aircraft unless the Governor in Council is of the opinion that it is in the public interest that such licence be issued. Licences have accordingly been

issued for domestic and international services to Trans-Canada Air Lines, a wholly-owned subsidiary of the Canadian National Railways, and to Canadian Pacific Air Lines Limited, a wholly-owned subsidiary of the Canadian Pacific Railway Company.

(e) *Royal Canadian Air Force*

Measures which appear to be satisfactory have now been adopted in consequence of complaints made by commercial air carriers regarding the practice followed by the Royal Canadian Air Force of providing free transportation not directly related to military purposes.

(f) *Regulation*

The subject of the regulation of air transportation is dealt with more fully in the Chapter on "National Transportation Policy".

CHAPTER XIV

WATER TRANSPORTATION

The following submissions were made dealing specifically with regulation of water transportation:

1. The Bellacoola Consumers Co-operative Association, of Bellacoola, British Columbia, complained of recent increases in coastal shipping fares and rates in that Province and made the following suggestion:

"The basic problem underlying this submission is that of establishing the right of people residing in the coastal areas of British Columbia to have set up some controlling body for the regulation of fares and freight rates to areas served by coastal steamship companies."

The evidence shows that the representative of the Association was speaking only on its behalf and not for the other coastal areas of British Columbia. No other submission was made supporting this recommendation.

2. The Canadian Industrial Traffic League recommended that regulation similar to that brought about by the Transport Act be established for water services between the Eastern and Western Coasts of Canada (presumably via the Panama Canal).

3. The Associated Newfoundland Industries Limited made the following submission on the matter:

"... of far greater importance, therefore, because of the relatively larger volume of traffic, is the subsidization of steamship rates in the same or somewhat similar manner to that applying to rail traffic under the Maritime Freight Rates Act. We, therefore, feel that there must be regulation of carriage of goods by sea rates on ships engaged in interprovincial carriage within the Maritime region, if any relief is to enure to the people of Newfoundland."

The Associated Industries further stated that:

"The regulation of freight rates should include the carriage of goods by sea as well as rail traffic by placing the same under the jurisdiction of the Maritime Commission or other statutory body with the necessary regulatory powers."

This regulation was not referred to by other Newfoundland submissions and was opposed by the Transportation Commission of the Maritime Board of Trade which said:

"This Commission is opposed to the extension of Part II of the Transport Act to apply to the transport of goods or passengers:

- (a) Between ports or places in British Columbia;
- (b) Between ports or places in Hudson Bay, Nova Scotia, New Brunswick, Prince Edward Island, and the Gulf and River St. Lawrence, east of the western point of the Island of Orleans, or between any two or more places therein, including Newfoundland; except in a case in which a strong and definite need is established for such regulation. It is submitted further that there does not appear to be any general need for such regulation, particularly in connection with the Maritime Provinces, and until there is a demand for regulation predicated on need it is submitted that regulation for regulation's sake is unwarranted."

Only a small part of domestic water transportation in Canada is regulated in respect to rates and services. This regulation is governed mainly by certain sections of the Transport Act, the Inland Water Freight Rates Act and the Railway Act.

The Canadian Maritime Commission through its subsidy agreements controls the fares, rates and services of all shipping companies in receipt of Federal subsidies. These subsidies are granted to provide water transportation to outlying communities. During the fiscal year 1949-50 thirty coastal and inland steamship services received subsidies amounting to more than two million dollars. Two of these services were operating on the West Coast, two on the Great Lakes and twenty-six on the East Coast, including the River and Gulf of St. Lawrence.

On the West Coast the coastal water transportation rates are determined by the Coastwise Operators Association of British Columbia.

On the East Coast the rates are partially established by a conference known as the Associated Newfoundland Lines comprising shipping companies operating from Montreal and Halifax to Newfoundland.

CONCLUSIONS

The extent to which water transportation should be regulated has been the subject of inquiries on different occasions in the past and was again considered at length by Parliament in 1937 and in 1938 when the Transport Act was introduced and enacted. These matters were again brought before Parliament when this Act was amended in 1944 and in 1945. The subject is dealt with more fully in the Chapter on "National Transportation Policy".

CHAPTER XV

MOTOR VEHICLES

The scope of this inquiry is limited, as of course it had to be, to "all questions of economic policy within the jurisdiction of Parliament". The subject of this chapter is motor traffic, which, in the main, is of purely provincial jurisdiction. But the effect of this traffic upon the welfare of the railways has assumed such importance as to make it necessary for the Commission to state the facts which those concerned in railway matters must bear in mind when dealing with the question of Canada's transportation policy. And besides this, it is also true that a portion of the traffic, relatively small but of sufficient importance to have become in itself a problem for the railways, is interprovincial and international, and therefore possibly within the competence of federal legislation (although, of course, this Commission does not pretend to express any opinion on legal questions that may arise concerning it).

Truck competition did not become noticeable in Canada until less than twenty-five years ago. In the chapter of this report dealing with Crowsnest Pass rates it is pointed out that in the course of the great parliamentary debate on freight rates, which took place in 1925, nothing at all was said about the truck. Water transportation alone was discussed as a factor holding down railway rates in Central Canada, to the advantages of shippers in that region. From then on the situation has been changing very rapidly, to the extent that today water competition is seldom mentioned; truck competition has overshadowed it almost completely. The years since the end of the war have seen this traffic increase more rapidly than ever with the improvement in motor vehicles and the extension of hard-surfaced highways which have taken place. The trucks generally provide favourable rates and a convenient service.

The Canadian National Railways has been affected more seriously than the Canadian Pacific by this competition because of its greater mileage in the industrial areas of Central Canada.

In 1923, there were 515,178 passenger automobiles, including taxis, registered in Canada. In 1949 there were 1,672,352 such registrations. In 1949 there were 7,696 motor buses in the country, urban and interurban. Statistics do not show the division in numbers between these two services. It is the interurban bus that competes with the railways.

The losses occasioned to the railways by motor trucks result partly from traffic diverted to the latter and partly from the granting of competitive rates by the railways in order to retain as much of the traffic as possible. The Railway Association of Canada estimates that at least \$50 million is being lost annually by the railways as a direct result of reductions made in freight rates (competitive rates) intended to retain some of the traffic.

Conditions seem to indicate that these losses to the railways by reason of truck traffic can be expected to increase as time goes on.

The effect of these losses in railway revenues is to throw a heavier rate burden upon the traffic which is non-competitive, that is long-haul and low-valued traffic. This burden is borne especially by those sections of the country, such as the Prairie Provinces, where truck competition is very much weaker than in Central Canada.

Motor vehicles operate on highways which are owned and maintained by the provinces. The revenue derived from them by each provincial government

consists of licence fees and gasoline taxes. Some discussion was had at the Commission's hearings on the question whether the revenues paid by the trucks to the provinces provide adequate compensation for their use of the highways. All that can be said here on this point is that it is in the interest of the provinces to collect at least enough revenue from this source to avoid loss if not to make a profit, and there does not appear to be any reason to suppose that this is not being done.

Regarding the distribution of business between for-hire trucks and private trucks, accurate information is lacking, but such statistics as are available show that private trucks far outnumber for-hire trucks, and that on the other hand the for-hire trucks carry a larger proportion of the traffic than might be assumed from their number. These latter trucks are of two classes, some operating as common carriers for hire and others carrying goods for shippers by contract.

The form of provincial control of trucks varies from province to province. British Columbia regulates rates and routes, and grants licences on the basis of public necessity and convenience. Alberta also requires proof of public necessity and convenience, but does not control rates. Saskatchewan and Manitoba require proof of public necessity and convenience and control rates. Ontario has no rate control but requires proof of public necessity and convenience. Quebec requires proof of public necessity and convenience and provides for the filing of rate schedules. The Maritime Provinces confine their regulations to matters of public safety. They do not regulate rates nor require proof of public necessity and convenience.

It is evident from the facts set out in this chapter that motor vehicles, mostly under provincial control, constitute a most serious form of competition to the railways. It also seems likely that this competition will increase in strength with the progress made in highway development. It must be borne in mind, in relation to this question of highway traffic, that the trucks are not to be considered as providing merely a form of unfair competition to the railways. The trucking industry has a useful part to play in transportation. A large part of its business is applied to the hauling of traffic which would not go to the railways in any event. The relation of these conditions to the formulating of a national transportation policy is discussed in the chapter dealing with this subject.

CHAPTER XVI

THE BOARD OF TRANSPORT COMMISSIONERS FOR CANADA

COMPOSITION OF THE BOARD AND ITS FUNCTIONS

From the time of its creation in 1903 until 1938 the Board was known as the Board of Railway Commissioners for Canada. In 1938 the name was changed by the Transport Act to The Board of Transport Commissioners for Canada.

The Board was at first composed of three members. This number was increased to six in 1908 and has so remained ever since. Each Commissioner is appointed to hold office, during good behaviour, for a period of ten years from the date of his appointment, and if not disqualified by age is eligible for re-appointment. He may be removed at any time by the Governor in Council upon address of the Senate and House of Commons. A Commissioner ceases to hold office upon reaching the age of 75 years. Both the Chief Commissioner and the Assistant Chief Commissioner must have been either a judge of a Superior Court or a barrister or advocate of at least ten years' standing.

The nature, jurisdiction and powers of the Board were set out recently in a statement made on the subject by one of its superior officers and it will be useful to adopt and reproduce this statement here:

"The Board is purely a creature of statute and has only such jurisdiction as the statute gives it either in express terms or by necessary implication: *Duthie v. G.T.R.** It is a court of record, and in respect of matters necessary or proper for the due exercise of its jurisdiction has all such powers, rights and privileges as are vested in a superior court: Sections 9(2) and 33(3) of the Railway Act. The orders or decisions of the Board cannot be questioned or reviewed in any court except on appeal under Section 52.*

"Originally the Board had jurisdiction over railways only. By subsequent legislation it was given a limited jurisdiction over other forms of transportation. In rough outline its present jurisdiction covers: (a) the construction, maintenance and operation (including rates) of railways; (b) the rates of telephone, telegraph and express companies; (c) the tolls on international bridges and tunnels; (d) the licensing and rates of ships on the 'Great Lakes' and the 'Mackenzie River' as defined in The Transport Act, 1938; (e) specific matters in regard to which jurisdiction is conferred by a number of general and special Acts, such as the Bridges Act, the Act respecting the Continental Heat and Light Company, and the Winnipeg Water Act.

"By Section 33 of the Railway Act, authority is given to the Board to inquire into, hear and determine any application by any party interested: (a) complaining that any company or person has violated or failed to comply with any provision of the Railway Act or the Special Act or any order made thereunder; (b) requesting the Board to make any order, or give any direction, leave, sanction or approval which by law it is authorized to make or give or with respect to any matter, act or thing which, by the Railway Act or the Special Act, is prohibited, sanctioned or required to be done. And by Section 34 the Board has power to make rules or regulations (a) with respect to any matter, act or thing which by the Railway Act or the Special Act is sanctioned, required to be done or prohibited; (b) generally for carrying the Railway Act into effect; (c) for exercising any jurisdiction conferred on the Board by any other Act."

Since the above statement was made the jurisdiction of the Board has been further extended to give it supervision over pipe lines for the transportation of oil and gas (The Pipe Lines Act, 1949).

*(1905) 4 C.R.C. 304.

*Section 52(10).

EFFECT OF THE BOARD'S DECISIONS

In Ex Parte 162 in 1946, when the Interstate Commerce Commission of the United States granted a 20% increase in rates, the Commission in referring to the decision it was about to make, said:

"What we do will directly affect production and distribution in the industries of the nation, and the welfare of its various regions, as well as the transportation industry. It will have its effect upon the forces tending to economic stabilization or the reverse."

The same may be said concerning rate increase decisions made by the Board of Transport Commissioners for Canada. Its action in these matters is important, not only because it meets the revenue requirements of the railways, but also because the form of the increase may have an effect on production and distribution, and the welfare of regions.

It is because of the impact of the Board's decisions on certain regions that seven provincial governments have contested the recent applications for rate increases made by the railways and asked for the appointment of a Royal Commission of Inquiry.

IMPORTANCE OF THE COMPOSITION OF THE BOARD

In 1902 when the Minister of Railways and Canals introduced the Act which created the Board of Railway Commissioners (in 1903), he said:

"Mr. Speaker, as this question impresses itself upon my mind, the character, the capacity, the wisdom and the selection of the men is everything. Unless this country can afford us men of the right stamp, men of independence of character, of firmness and of fairness, men who have experience in business, experience in railway operation, experience in law; unless the country can afford us these conditions, then, we cannot look with any reasonable hope to find that the operation of the Commission will be successful. We have, therefore, to give to these men such a tenure as will invite the men that we want to come and take their seats upon this Board. We have to give them a tenure long enough to induce them to give up any business in which they may be engaged and which may be profitable."

Dr. Simon J. McLean, upon whose recommendations the Board of Railway Commissioners was set up, had this to say in his report to the Government in 1902:

"The experience of both England and the United States points to the conclusion that the most efficient work would be obtained from the Commission if the members were appointed on the same tenure as the judges. A life tenure would mean a continuity of regulative tradition. It would also mean that the dignity and security attaching to the life tenure would permit the Commission to obtain a high order of ability, which could be obtained only in the case of the shorter tenure by the payment of a salary much higher than Canada could afford to give."

After pointing out that "no species of regulation can remove all of the complaints that have arisen" and that some of the complaints are "the outcome of economic forces which are superior to legislative enactment", Dr. McLean stated: "The regulation will be in the interest not only of the shipper, but also of the railway. Equipped with an efficient and commanding personnel, the Commission will stand as arbiter. It will have responsibilities to both parties."

It is clear from both what Dr. McLean and the Minister said in 1902 that it was then regarded as most important that the Board have "an efficient and commanding personnel," that the tenure of office of the Commissioners should be sufficient to attract men of the highest calibre, and that the "selection of the men is everything".

If this was important in 1902, it is far more important today. The jurisdiction of the Board covers a wider field; the amounts involved in rate cases run into hundreds of millions of dollars. The Board's powers in matters outside the scope of this Commission, e.g. telephone lines, are in themselves great and lend further weight to the necessity of a strong Board equipped with a capable and efficient staff.

Legislation giving broad powers will not cure all ills. The successful operation of the Board must depend on the ability of the men who are appointed to it and the staff which they have around them.

COMPLAINTS CONCERNING THE BOARD

The complaints before the Commission concerning the Board were many and varied, but may be shortly stated as follows:

1. The railways' chief complaint concerns the delay in granting increases in rates to correct "the imbalance between rates and costs". In the main, however, the railways seem to be satisfied with the Board. Counsel for the Canadian Pacific Railway Company states that since 1903 it has had many eminent men among its members, and that it has built up a sound body of jurisprudence based on tried and established principles of regulation drawn from both Great Britain and the United States, and that there is no single basic principle of the Board's jurisprudence which is not founded upon justice and impartiality as between the public and the railways. He alleges that the Board is equipped, qualified and experienced in finding what are just and reasonable rates. The Chairman of the Canadian Pacific Railway Company states that the staff and technical assistants of the Board might be enlarged and possibly the personnel of the Board itself might be strengthened. Another witness for the Canadian Pacific said that the traffic department of the Board has sufficient staff and that this part of the Board's operations is being well administered, but that more staff may be needed when the General Freight Rates Investigation is under way. An accounting witness for the Canadian Pacific says that the accounting staff of the Board needs strengthening and that if uniform accounting is adopted there will have to be a reorganization of that department of the Board. The Canadian National Railways is in agreement with these last two statements. Counsel for the Canadian Pacific Railway Company said: "It is easy for parties who are dissatisfied because they have not had all their arguments accepted by the Board to make the statement that the Board has applied wrong principles, that its attitude is either too legalistic on the one hand, or, on the other hand, a complete departure from the established principles of rate making . . ."

In effect, then, the railways pass over the criticism of the provinces as being due to the fact that they "lost the case" and are accordingly dissatisfied with the decision.

2. The provinces criticized the Board on many grounds, chief of which were: That although the Board had the necessary powers to act in certain cases, it had failed to do so; that it had not exercised sufficient control over railway operations and rates, particularly competitive rates; that it did not act enough on its own motion and initiative; that it erred in accepting railway officers' opinions on certain matters without thorough investigation; that it failed to bring about equalization; that it had a negative attitude in dealing with geographic, climatic and economic conditions and also in long and short haul discrimination; that it did not give sufficient consideration to the economic effects of its decisions; that it waited for complaints and had placed an impossible onus on individual shippers seeking individual rates; that it had improperly handled freight rate increases, taking the easy but unfair method of applying

uniform percentage increases; that it had, by following slavishly its prior decisions, circumscribed its powers; and that it had not an adequate staff of advisers, accountants, economists, rate experts and statisticians.

SUGGESTED REMEDIES

The remedies suggested were vague and general in character and fall into four classes:

(1) Suggestions of the first class deal with the character of appointments to the Board and the enlargement of the Board's staff. As summarized they are:

That the members of the Board should have "the highest possible qualifications, so as to ensure a judicial and competent performance of its functions under the Act";

That the Board should be "strengthened" administratively and be supplied with an "adequate" staff of advisers, experts, accountants, engineers, economists, rate experts and statisticians;

That there should be set up a system of "examiners" similar to that existing in the organization of the Interstate Commerce Commission in the United States. These examiners are senior officers of the Interstate Commerce Commission who hear certain classes of cases at different points throughout the country and report to the Commission;

That there should be an office of the Board in each province with local representatives and "adequate" personnel; and

That the Board should be composed of men who "understand transportation".

Stress was laid upon the importance of the Board's decisions and the necessity of a "strong" Board.

(2) Suggestions of the second class are to the following effect:

That the Board should be "more active" in making investigations;

That the Board should make "continuous studies of rates and review and adjust rates more often on its own motion";

That the Board should exercise "more initiative" and should "direct and maintain" equality of rates between all regions;

That the Board should be "freed from its previous decisions";

That the Board's attitude should be "less negative" and "more positive"; and

That the Board should maintain closer regulation over "individual rates", rate levels, accounting, segregation of rail and non-rail assets, and particularly over competitive rates.

(3) Suggestions which fall within the third class favour the broadening of the Board's powers. They are as follows:

That the powers of the Board should be "clarified" and "widened";

That the Board should have "fuller supervisory responsibilities including such matters as authority and responsibility to compel economies, and require co-operation under the Canadian National-Canadian Pacific Act," the "determination of the standard of service" to be supplied by the railways, and the right to "force the railways to take full advantage of technological improvements";

That the Board should "examine the efficiency" of railway operations when applications are made for increases in rates because of increases in wages to railway employees;

That the Board should be given control over air, highway and water transportation; and

That the Board should have power to control the "floor" as well as the "ceiling" for rates.

(4) The suggestions of the fourth class tend to a limitation of the Board's powers. They propose:

That the Government should take a "more active role" and "interfere on major issues";

That the Board's powers are broad enough now and should not be increased;

That the Board's powers should be "more precisely defined";

That the Board should not be an "economic planning Board";

That there should be less regulation of railways, that extension of regulation stultifies management and curtails initiative and results in the Board substituting its judgment for that of railway management;

That the policies to be followed by the Board should be set out in the statute;

That the Board should be less independent and subject to more government control; and

That the Board's function should be "primarily to prevent inequality".

ASSESSMENT OF THE COMPLAINTS

It must be borne in mind that the complaints in the main are from two parties who came into sharp conflict with one another in a series of cases before the Board in the midst of a drastic change in economic conditions following a World War and the decontrol of prices, and that neither party to the dispute was entirely satisfied with the results of the decisions of the Board. Many of the issues raised must be viewed in the light of these facts.

Some complaints made during the course of the hearings were later abandoned or moderated; examples of these are: (a) the complaint that the Board did not give effect to geographic, climatic and economic conditions; in the final presentations all parties admitted that the Board should not be made an economic planning body; (b) the complaint that the Board should not be bound by its previous decisions; all parties agreed that the Board is not so bound and that Section 51 of the Railway Act is clear on this point.

In the main it would seem that the following criticisms of the Board are worth recording here, in the expectation that this will lead to an improvement in procedure for the future, and have been justified by the facts:

1. That, in the circumstances of the long delay in disposing of the 30% application made in 1946, the Board ought to have granted an interim increase in proper time. On the other hand, however, it must be pointed out, in this regard, that the railways did not ask for such an increase;
2. That the Board accepted the assumption that all rates could be justly and reasonably increased by the same large horizontal percentage increase, regardless of length of haul, the nature of the commodity or the ratio of the freight to the value of the article. This is an unwarranted assumption;
3. That the Board did not itself obtain, or compel the railways to file with it, proper statistics concerning traffic movements so as to enable it to determine which articles could bear greater or lesser increases in rates;
4. That the Board has not paid sufficient attention to the classification to ascertain that articles are properly classified to meet changing conditions;
5. That the Board has not over the years kept close enough supervision over competitive rates. It will be sufficient in this regard to refer to the conclusions on this subject to be found in the Section on Competitive Rates in this report;

6. That the Board has not in the past twenty-three years taken steps to bring about equalization between rates in the West and in the East; and
7. That the Board has not paid proper attention to the effect of increases in rates on long-haul traffic.

All of these matters are dealt with elsewhere in this report, but the following statements must be added here in fairness to the Board:

(a) At the time the first of the recent rate increase applications was made in 1946, the Board had been comparatively inactive for a considerable period during which the rates were "frozen" and prosperous traffic conditions had created a sense of security in the railways and in the Board;

(b) The Board, while seeming to recognize that the method of increases by a straight horizontal percentage might not be just and reasonable in all its consequences, said that it was unable to depart from it because of the lack of reliable statistics with which to devise a different scale of increase;

(c) The Board has been ordered to hold a General Freight Rate Investigation and has undoubtedly felt that some of these matters should properly await the results of such investigation; and

(d) The railways are responsible in some measure for prevailing unsatisfactory conditions because of their failure, or their inability, to supply the Board with information which would have enabled it to deal more promptly and efficiently with the problem of rate adjustments.

ASSESSMENT OF THE SUGGESTIONS

The suggestions made are in the main too vague to be helpful. Most of them may more properly be termed "complaints" put forth in the guise of suggestions.

When asked what broader powers should be conferred by statute on the Board, or what more precise definitions of the powers should be set out in the Railway Act, most of the parties insisted that the Board should have broad discretionary powers and that the Act is satisfactory in its present form but that the Board has "circumscribed" itself by its decisions.

It can be stated fairly that what everyone really wants is that the Board's powers be kept as they are now, but with the hope and expectation that the recent contentious proceedings which have gone on will cause the Board to exercise greater care in the future in arriving at its decisions.

Nothing put forward to the Commission warrants recommending any extension or limitation of the Board's present powers under the Railway Act.

Nothing put forward to the Commission warrants recommending the establishment of Branch Offices of the Board in the various provinces.

Regarding the appointment of examiners with similar duties to those performed by examiners for the Interstate Commerce Commission, the fact is that the Board itself, acting under Section 12 of the Railway Act, has wide powers for providing for the hearing of cases before it by two, or in some cases by one, of its members and that this power is being exercised. Sittings under this Section are held in various localities to suit the convenience of interested parties.

CONCLUSIONS

With the exception of the pertinent recommendations found elsewhere in this report, there is no reason why the powers and duties of the Board should be changed.

It is not desirable to enact statutory directions setting out rigid principles to be followed by the Board.

The Board should continue to have broad discretionary powers.

Most of the complaints made are capable of adequate remedy under the existing legislation.

Most of the suggestions made are in reality criticisms which the Board may overcome.

In dealing with the subject of the Board, the importance of its functions and the high standard which should be maintained in the selection of its members cannot be stressed too strongly. Since its inception, the Board's responsibilities have in many respects increased, and its jurisdiction has been extended. It is now called upon to regulate some of the most important public utilities in the country and its decisions are of vital importance to, and have far-reaching effects upon, almost every person in Canada.

Because the Board's duties seem likely to be very onerous from now on, the tenure of office of members of the Board should no longer be limited to ten years. This ten-year limitation must have a deterrent effect on qualified men who realize that in accepting appointment to the Board they run the risk of finding themselves in an undesirable position, by reason of age or of altered business conditions, when they return to private life. Dr. McLean's recommendation of a life tenure was not acted upon but the principle implied in it might well be adopted now by making the position of the members of the Board similar to that of Judges of the Court of Exchequer, with retirement at the age of seventy-five years. The statutory qualifications of the Chief Commissioner and Assistant Chief Commissioner should continue as at present. It is not suggested that the Railway Act determine any particular qualifications for the other members because such a provision might stand in the way of some desirable appointments. It must be left to the discretion of the Governor in Council to decide in each case what qualifications shall be required of the appointee.

It is of course of major importance that an administrative and judicial tribunal dealing with matters of the kind here involved be provided with an adequate staff of experts. Provision for this is already made in Sections 21 and 25 of the Railway Act. There are times when the staff required may be much larger than at other times, as, for instance, during a general freight rate investigation.

RECOMMENDATIONS

All the suggestions in the above conclusions are to be taken as being made subject to the recommendations regarding the reorganization of the system of control and co-ordination of all agencies of transportation found in the Chapter entitled National Transportation Policy.

CHAPTER XVII

NATIONAL TRANSPORTATION POLICY

Paragraph 2(a) of Order in Council P.C. 6033 contains the following sentence which is of great significance:

“ . . . to recommend what measures should be initiated in order that the *national transportation policy* may best serve the general well-being of all Canada.”

It has been suggested that Canada's national transportation policy is defective in certain respects, that for instance it is not “co-ordinated”, and that it is not an “integrated” policy.

The broad outlines of Canada's national transportation policy may be found in an examination of the following relevant facts:

- (a) The construction of the Intercolonial Railway to enable the Provinces of Nova Scotia and New Brunswick to market their products in Central Canada;
- (b) The construction of the Canadian Pacific Railway to unite British Columbia with the rest of Canada;
- (c) The agreement to establish and maintain continuous communication between Prince Edward Island and the mainland of Canada;
- (d) The Terms of Union with Newfoundland providing for the taking over of the Newfoundland Railway and Steamship Services and the entrustment thereof to the Canadian National Railways, and the agreement to maintain a freight and passenger steamship service between Port aux Basques and North Sydney;

(All of these policies were made part of the terms of Union between Canada and the various provinces mentioned above, and indicate the importance which transportation has had in the very formation of the confederation from the beginning in 1867 until the recent entry of Newfoundland in 1949.)

- (e) The adoption by Parliament of the Crowsnest Pass Agreement to ensure cheap transportation of grain from the Prairie Provinces to the head of the Great Lakes on its way to foreign markets; originally this agreement applied only to lines of the Canadian Pacific Railway in existence in 1897, but Parliament subsequently made the rates statutory for all railways;
- (f) The passage of the Maritime Freight Rates Act in 1927 to provide for reduced rates on westbound traffic and on traffic within the “select area” designated by the Act, the application of the Act as far as appropriate to the Island of Newfoundland in 1949;

(Parliament's action in these matters indicates recognition of the importance of transportation to particular areas and the possible necessity of special treatment under certain circumstances.)

- (g) The construction of the National Transcontinental Railway to encourage the shipment of goods through Canadian ports;
- (h) The construction in Central Canada of an extensive canal system which became toll free, built at a cost of about \$328,000,000 and maintained at government expense;
- (i) The granting of substantial areas of land and subsidies to encourage and assist railway construction and the opening up of the country;

- (j) The taking over by the country in the years between 1918-1923 of the bankrupt railway lines and the welding of them along with government lines into the Canadian National Railway System;
- (k) The construction of Hudson Bay Railway and the development of the Port of Churchill;
- (l) The subsidization of coastal shipping services and large investments in harbours and other navigation facilities;
- (m) The large investment in and operation of Trans-Canada Air Lines and assistance given to other air lines;

(These all indicate Parliament's close attention to and active participation in the transportation field.)

- (n) The establishment in 1903 of the Board of Railway Commissioners which in 1938 became the Board of Transport Commissioners for Canada;
- (o) The enactment in 1938 of The Transport Act providing for a degree of co-ordination;
- (p) The establishment in 1944 of the Air Transport Board; and
- (q) The establishment in 1947 of the Canadian Maritime Commission.

(These measures indicate Parliament's interest in the regulation and supervision of transport media.)

All the foregoing form part of a National Policy. They indicate the continuous concern of Parliament with Canada's transportation problems including the problem inherent in great distances and sparse population. Parliament has authorized the expenditure of huge sums of money to overcome these difficulties which stood in the way of the country's development.

Canada, by the very nature of its geographic location, the great distance between its extremities, the vast stretches of relatively unproductive areas between its settled parts, and the existence of much mountainous terrain, is a difficult country for which to furnish transportation. Yet in a comparatively short space of time it has been provided with two large and efficient railways, an extensive canal route in Central Canada and a rapidly developing system of air transport. Under Canada's constitution, control over highway traffic is, in the main, vested in the legislatures of the Provinces. The Provincial Governments have expended large sums of money on road construction and gradually the country is being provided with a network of good roads. Now the Federal Government is co-operating with the Provincial Governments in the construction of the "Trans-Canada Highway" which will link the Provinces of Canada from the Atlantic to the Pacific with a suitable route for motor transport.

It has always been recognized that railways are of primary importance to Canada and its people. Ours is a country great in size and small in population, yet today we rank third in the whole world in the export of goods. This by the very nature of things requires a long haul of primary commodities which to a great extent must be transported by rail.

To enable our products to compete in world markets the railways must be able to haul goods cheaply and efficiently. It is therefore important not alone to the railways, but to our people that the two major railway systems shall always be in a position to match the progress made in other countries which compete with Canadian producers for the markets of the world. Without this Canadians would be at a competitive disadvantage.

Canada, more by accident than by design, became the owner of what is today one of the largest railway systems in the world. This came about because the Federal and Provincial Governments had guaranteed the obligations of the railway companies which were later to become amalgamated into the Canadian National Railways System. This situation is unique in history—the country

owns and operates a railway in competition with a privately-owned one almost as large, and the two together provide over ninety per cent of the entire rail transportation in the country.

It is part of the National Transportation Policy that the two great systems shall have the opportunity to operate side by side, in order to provide the requisite services to the country and its people and at the same time to serve as a check and a balance on each other, without destroying the opportunity of the privately-owned road to live and progress and to earn a fair revenue.

It was submitted to the Commission that the two railway systems should be amalgamated under Government ownership and operation. This is not a novel suggestion, and it has been considered and rejected on previous occasions. The conclusion reached on such an examination of the proposals as it has been possible for the Commission to make is that such an amalgamation would not be an effective remedy for the problems which are said to affect Canada's railway system at this time. The question is dealt with more fully in another chapter.

CO-ORDINATION

Submissions were made to the Commission urging the "co-ordination" and "integration" of all forms of transport media and the regulation of all by one and the same Board in order to bring about such integration and co-ordination.

This question of the co-ordination of transport has a history which it will now be of interest to review. In 1938 Parliament passed The Transport Act, which was declared to be "An Act to establish a Board of Transport Commissioners for Canada, with authority with respect to transport by railways, ships and aircraft." The Board so established was the former Board of Railway Commissioners for Canada whose members remained in office with a change of name. The Act then went on to define the duties of the Board as follows:

"3(2) It shall be the duty of the Board to perform the functions vested in the Board by this Act and by the Railway Act with the object of co-ordinating and harmonizing the operations of all carriers engaged in transport by railways, ships and aircraft and the Board shall give to this Act and to the Railway Act such fair interpretation as will best attain the object aforesaid."

This provision declared the object of the legislation to be to co-ordinate and harmonize all carriers of certain descriptions, that is railways, ships and aircraft. But later provisions of the Act restricted the duties of the Board very considerably in respect to air and water transportation. (Sections 12 and 15). In the result the Board was left with full jurisdiction over transportation by rail, but very limited jurisdiction over transportation by air and water.

In 1944 Parliament changed its policy in respect to co-ordination. The Act passed in that year repealed the aforesaid Section 3(2) and substituted the following therefor:

"3(2) It shall be the duty of the Board to perform the functions vested in the Board by this Act and by the Railway Act with the object of co-ordinating and harmonizing the operations of all carriers engaged in transport by railways and ships and the Board shall give to this Act and to the Railway Act such fair interpretation as will best attain the object aforesaid."

During the same session Parliament provided for the separate regulation of air transportation by setting up a Board known as the Air Transport Board, consisting of three members appointed by the Governor in Council.

The net result of the action of Parliament in 1944 was to lessen very greatly the possibility of co-ordinating and harmonizing the different transport media under Federal control. It left to the Board of Transport Commissioners the duty of carrying on this co-ordinating and harmonizing in so far only as the

railways and a minor branch of the water transportation system are concerned. Therefore air transport and the greater part of water transport are not included in Parliament's present policy of co-ordination and harmonization.

In 1947 Parliament passed further legislation creating the Canadian Maritime Commission. While this Commission cannot be considered a regulatory body in the same sense as the Board of Transport Commissioners and the Air Transport Board, its powers and duties affect water transport in some respects; for instance it examines, ascertains and keeps records of the shipping services between Canadian ports and from ports in Canada to ports outside Canada that are required for the proper maintenance and furtherance of the domestic and external trade of Canada, Section 7(a). It also administers the subventions for coastal steamships which Parliament votes each year. In its administration of these subventions the Commission enters into contracts with the companies, containing provisions as to the tolls charged by them.

The fact is therefore that while Parliament made provision in 1938 for a Board of Transport (instead of Railway) Commissioners it did not go as far as it might have gone towards bringing about complete co-ordination of "all carriers engaged in transport". And the trend of legislation in recent years has been away from integration and co-ordination; so that now there are three bodies instead of one regulating transportation.

Nevertheless several submissions were made at the hearings of the Commission asking that steps be taken to bring about what was called "the co-ordination and regulation" of all forms of transport. This of course must be taken to mean all forms of transport within the jurisdiction of Parliament. Special mention was made of the desirability of bringing trucks within the same control and regulation as the railways. And here a great obstacle lies in the way. By far the largest part of truck traffic is intra-provincial, and most of this intra-provincial traffic consists of private trucking, that is trucking done by individuals and commercial firms in the handling of their own articles of merchandise. Only a small percentage is trucking for-hire. All this intra-provincial truck traffic, both private and for-hire is beyond the jurisdiction of Parliament, and this fact presents a barrier to co-ordination and integration of highway and railway services.

There is a disposition in some quarters to find fault with this state of affairs and to express the opinion that the situation is undesirable and should be brought to an end. But such situations are bound to arise in a country such as Canada where there is a division of jurisdiction between a central authority and several local authorities. Provinces could not exist as such unless they had certain legislative and executive rights which cannot be taken from them. The consequence is that there cannot be a national policy properly so-called embracing matters which are of exclusively provincial jurisdiction. Education, for instance, is a subject which in countries of one legislature is regarded as being a most effective instrument of uniform national policy. But Canada cannot have a national policy in education because each province is supreme within its own territory in all questions affecting this subject. And so it is with transportation. It is hard to see how provincial transportation (as it may be called) can be handed over to the control of the Parliament of Canada without an amendment to the constitution. But even if the change could be brought about more readily, the first question to be asked here is, where do the several provincial governments stand on this proposal at this time?

The seven provincial governments which united in asking for the appointment of this Commission were questioned on this matter. Of the seven, six stated that they would not agree to divest themselves of their exclusive jurisdiction over intra-provincial motor transport. The only province to speak somewhat differently was Saskatchewan, whose government said that it would transfer to

the Government of Canada the control and regulation of rates for commercial trucking within its borders on two conditions: (1) that provincial revenues should lose nothing by the transfer, and (2) that the Government of Canada should provide at its expense for the building of hard-surfaced roads in the Province. The Provinces of Ontario and Quebec were not represented before the Commission, but there is no reason to believe that either of them would agree to hand over its jurisdiction in this matter to the Federal Government. Newfoundland made no reference to the subject.

This attitude of the Provinces gives no ground for the hope that central, uniform control and regulation of all transportation, including provincial transportation, is realizable in the near future.

Notwithstanding the existence of this barrier of provincial opposition, it will be well to state briefly the views expressed on the subject.

The Canadian Manufacturers' Association would like to see legislation similar to the Railway Act made applicable to all forms of transportation; but the Association, recognizing the provincial opposition to federal jurisdiction as standing in the way of central control, expresses the opinion that the provinces should unite in enacting uniform legislation regarding trucking.

The Ship-by-Rail Association, the Canadian Industrial Traffic League, the Maritime Board of Trade, the British Columbia Feed Manufacturers' Association, the Vancouver Board of Trade, the British Columbia Paper Manufacturers and Converters and the Saguenay Council on Economic Planning are all in favour of regulation, but all recognize that this regulation, under present conditions, must remain with the provinces. Some of these bodies favour the situation being left as it is, others would like to see a central controlling body established.

The Dominion Joint Legislative Committee of the Railway Transportation Brotherhood recommend "that uniform and effective regulation and control be now applied to all forms of transportation for-hire, including that on highways". The Committee confined its recommendation to the regulation of for-hire trucks, and does not wish to impose restrictions on the operations of private trucks.

The Canadian Congress of Labour recommends: (1) that each type of transport be assigned to the task it can perform most economically; (2) that all transportation services be under the control of the Board of Transport Commissioners; and that the British North America Act be amended to make these things possible.

The International Brotherhood of Teamsters is opposed to federal control of trucking.

The Canadian Automotive Transportation Association opposes the regulation of trucking by a central authority. It says that this system would work against the public interest because it would mean the regulation of trucks for the benefit of the railways.

The only practical subsisting question in respect to the regulation of motor transport by federal legislation has to do with interprovincial and international traffic. If it is to be assumed that the authority of Parliament extends to the control of these forms of transportation the question to be considered is whether it is in the public interest that such control should be established. In the present state of the law this control could be established by adding in the first place to the words "all carriers engaged in transport by railways and ships," in Section 3(2) of the Transport Act, the words "and by motor vehicles in interprovincial or international traffic" or words of similar import. The effect of such an amendment would be to place these vehicles in the same position as railways and ships. It would thereupon become the duty of the Board of Transport Commissioners to co-ordinate and harmonize their operations with those of these other carriers.

These carriers would then lose some of the freedom of action which they have to-day, but, on the other hand, they would acquire a status which they do not now enjoy. The railways would still have them as competitors, but they would be regulated competitors. Whether or not this new arrangement would work out to the advantage of the railways, as seems to be generally assumed, would remain to be seen in the light of experience.

In the United States the Interstate Commerce Commission regulates motor vehicles engaged in interstate traffic, with certain exceptions. Such traffic forms a greater proportion of the country's total motor vehicle traffic than is the case in Canada. This is because of the large number of States in the Union (48) of smaller territorial extent than the average Canadian Province and the consequently large volume of interstate traffic, especially in regions such as those comprised in New England and the Atlantic States. Truck carriers are divided into three classes: common carriers, contract carriers and private carriers. Rates are regulated in respect only of common carriers and contract carriers. The Act requires common truck carriers to publish "fair and non-discriminatory rates" subject to change only on thirty days' notice, and the Interstate Commerce Commission is given power to prescribe maximum and minimum rates for them. Contract carriers are required to file minimum rates, and, in their case, the Commission is empowered to prescribe minimum, but not maximum, rates.

It is well to point out here, that according to estimate there are in all Canada not more than 1,500 trucks engaged in interprovincial and international traffic, out of a total of about 50,000 for-hire trucks.

In 1937 and again in 1940 bills were introduced into Parliament providing for federal control of interprovincial and international trucking. These bills met with strong opposition and were finally withdrawn.

All forms of trucking have increased considerably since 1937. The time has come when Parliament might well reconsider this question of control. There seems to be no valid reason why those who carry on a business over which Parliament has jurisdiction (assuming this to be the case) in competition with others who are regulated in respect to their rates and operations should not be asked to submit to a similar form of control. This, of course, does not mean that any one form of transportation should be regulated only for the benefit of another.

RE-ORGANIZATION OF CONTROL

In so far as Parliament can regulate and control transportation, the object should not be confined to the rather negative work of correcting abuses, but should reach out to the positive constructive task of developing adequate and efficient transportation services and of "co-ordinating and harmonizing" the service in the public interest. The regulation of railways can best be exercised by combining it with the regulation of the other agencies of transportation. It is true that Parliament's lack of jurisdiction over intra-provincial transportation presents a major obstacle to the full attainment of this most desirable object. It is of course permitted to hope that the provinces will some day agree to co-operate with the Federal authority in the carrying out of a common policy of co-ordination. Until that day comes, however, there is no reason why Parliament should not proceed as far as its authority extends towards the establishment of a national transportation system functioning under the control and regulation of an efficient supervisory board. The several means of transportation—railways, waterways, airways, (highways), and now pipe lines—are distinct agencies that are inseparably inter-related. They should be so regulated as to serve not only individually but collectively in meeting the country's needs. As an instance of something now requiring attention, it might be pointed out that

the place of water carriers in the country's transportation system as a whole should be more definitely determined in order that they may be enabled to take their proper place as a part of the country's transportation system.

All this leads to the question whether the policy of close co-ordination and central control to which Parliament seemed inclined to commit itself in the Transport Act of 1938, should not be invoked once again with the view to its extension rather than to its restriction which has been the trend of more recent enactments. If this policy of 1938 can be revised and made effective it should properly have its beginning in the establishment of a strong control organism capable of taking the task in hand. Today there are three separate bodies, each charged with the control (a more or less extensive control in each case) of a part of Canada's transportation system. They are the Board of Transport Commissioners, the Air Transport Board and the Canadian Maritime Commission. It must be difficult, with this dispersion of control, to apply to all of Canada's transportation agencies like principles of regulation for the accomplishment of a common purpose, viz. that of enabling each agency to perform its service advantageously and properly as part of a national transportation structure. The tendency of a separate independent body is to formulate policy affecting transportation without regard to the relationship of the various agencies to each other. This anomaly should give way to the constitution of a Central Authority which will be able to take in hand the major task of co-ordinated control, having at its disposal all the benefit acquired from the experience of the separate bodies in recent years.

The adoption of this policy would bring together the three above named bodies, re-organized and united and devoted henceforth to the pursuit of a well planned policy for the co-ordination and regulation of transportation.

(To avoid misunderstanding it is well to note that nothing suggested here is intended to affect in any way the functions of the Air Services Branch of the Department of Transport, which should continue to exercise its powers and duties as at present.)

An important consideration in favour of the unification here proposed is that of staff. The regulation of transportation has become a highly complex and technical subject, which requires the help of experts in many fields of work. It cannot be expected that the members of a board, however carefully they may be chosen, will be versed in all the branches of knowledge which must be available for the satisfactory disposal of business and the settling of all issues between parties. Substantial reliance must be placed on expert assistants. It is therefore necessary to have at hand the best advice and consequently the best staff possible, proper consideration being given to necessary limitations of expenditure. The enumeration of the types of different staff duties, such as traffic, economics, statistics, accounting, licensing and secretarial work, indicates the desirability of unifying these activities under one authority. Apart from consideration of staff efficiency and the proper performance of duties, it seems certain that the consolidation here recommended would result in an appreciable saving of salaries and expenses.

ACKNOWLEDGEMENTS

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The whole of the foregoing is respectfully submitted.

W. F. A. TURGEON,
Chairman.

H. F. ANGUS,

H. A. INNIS,
Commissioners.

Dr. H. F. Angus's concurrence in this report is given subject to his reservations to certain parts thereof referred to in his "Reservations and Observations" which follow.

RESERVATIONS AND OBSERVATIONS BY DR. H. F. ANGUS

RESERVATION TO THE CONCLUSIONS OF CHAPTER I ON ECONOMIC, GEOGRAPHIC
AND OTHER DISADVANTAGE OF CERTAIN SECTIONS OF CANADA

I regret that I am unable to associate myself with the Conclusions reached by my colleagues in this Chapter, without making one reservation:

The complaints made by the provincial governments seem to me to concern the effect upon their people of national policies rather than the physical fact of distance from markets and sources of supply. They do not challenge these policies which comprise not only the tariff but the very maintenance of Canada as a separate nation; but they complain that too little has been done to compensate those who suffer economically as a consequence of these policies. This is not a complaint against the railways. It is a complaint against the federal government which, in effect, is asked to subsidize the railways in order to enable them to forego high freight rates.

RESERVATION TO THE CONCLUSIONS OF SECTION 2 OF CHAPTER II ON RATE BASE
AND RATE OF RETURN

1. While I agree with my colleagues in not recommending the amendment to Section 325 of the Railway Act proposed by the Canadian Pacific Railway, I am unable to subscribe to the reasoning in the part of the Report dealing with Rate Base and Rate of Return. It is necessary to make this clear because parts of this reasoning might stand in the way of views which I shall have occasion to express concerning the aggregate revenue which rates should yield in order to be just and reasonable to the railways and at the same time to shippers and consumers.

2. My own reasons for not recommending the proposed amendment are:

(a) The plan of recapitalization which we have recommended for the Canadian National Railways does not involve the dangers against which the proposed amendment was designed to protect the Canadian Pacific Railway. The amendment is, therefore, unnecessary.

(b) Although the Board may find it convenient to use the rate base and rate of return method of determining the revenue which the Canadian Pacific Railway should receive, I do not think that the use of this method should be imposed upon it by statute unless some of the highly controversial issues surrounding the construction of a rate base have first been settled.

OBSERVATIONS ON RELATIONS BETWEEN RAILWAY COMPANIES AND EMPLOYEES

A comprehensive transportation policy should pay due regard to the interests of labour which is as much entitled to just and reasonable treatment as shippers or investors. In Canada this problem has not been tackled directly and railway labour, in particular, has been regarded as a cost which it is the duty of management to keep as low as possible. Labour has had to rely on its bargaining power and ultimately, therefore, on its ability to stop railway operation by a strike. The Industrial Relations and Disputes Investigation Act extends to railways and establishes procedures of bargaining and conciliation which must be followed before a strike or lock-out may be declared.

Since the war there has been a general demand for a shorter working week and better conditions of work, while the inflation has led inevitably to a demand for higher wages in terms of dollars. In the case of the railways this pressure

has coincided with difficulties which have been considered elsewhere in this Report: A fall in the volume of traffic and a change in the rate structure imposed by truck competition. The result has been a great (and, perhaps, exceptional) strain on the procedures provided by The Industrial Relations and Disputes Investigation Act. It was some time after the conclusion of our hearings that this strain culminated in a strike which was ended by *ad hoc* legislation imposing compulsory arbitration.

If the matter were to be left at this point we should, in effect, though not in form, have compulsory arbitration as a final stage in disputes which affect railway labour. It is compulsory arbitration in an extremely tactful, but also in an extremely expansive and inconvenient, form. It is based on the intolerable inconvenience of a cessation of railway operation and, on this ground, recognizes a distinction between railways and other enterprises, which is not known to The Industrial Relations and Disputes Investigation Act.

The effect of this development on future labour disputes remains to be seen. Railway management cannot afford to yield too readily to any demands, however reasonable, or it may be denied the consequential increase in freight rates for which it will have to apply to the Board. The best way of demonstrating its efficacy as a bargainer would be to concede nothing more than what conciliation proceedings under the Act may recommend and to allow any difference between a conciliation award and the demands of labour to go to arbitration by the trail blazed by a strike, a special session of Parliament and *ad hoc* legislation. If these awkward procedures could be simplified with fairness to all concerned the advantages are obvious.

Such discussion of railway labour as took place in the course of the hearings preceded the recent strike. With the exception of labour itself the parties were primarily concerned with keeping freight rates as low as possible. They had, therefore, to question both the net income to which the railways were entitled and the wages and conditions of work to which labour was entitled. No practical submissions were made, but the general view seemed to be that it was the duty of railway management to drive as hard a bargain as possible and the responsibility of the Board to satisfy itself that this duty had been discharged. The railways did not complain of the bargaining procedure in itself, but they did complain of the time-lag between increases in wages and increases in freight rates.

If it were conceded that the railways were entitled to some just and reasonable net income, or that a "Yardstick" railway should have a definable permissive income, the position of labour would be to some extent clarified. As long as it was economically and legally possible for the yardstick railway to earn its permissive income any increase in labour costs would be passed on to shippers and consumers in higher freight rates. The net income of the railway would act somewhat as the fluid in hydraulic brakes acts. Its merit would be its relative incompressibility, and its inability to expand.

It would follow that the parties interested in wages, or labour costs, would be labour on the one hand and shippers or consumers on the other. Railway management would have at most a contingent interest: an interest which would arise if freight rates were raised to their economic ceiling, the point at which higher rates would not yield a higher income.

It would also be quite clear that the labour disputes affecting railways differed from other labour disputes in a number of significant ways:

- (a) Railways, unlike other employers, sell their services at controlled prices;
- (b) Up to a point the net income of the railways will be protected by raising these controlled prices, (or by subsidies if a control is maintained for reasons of public policy). To this extent the increases in labour costs will be passed

on to users of railways (or to taxpayers). But assume that the railways had conceded in bargaining all that the recent arbitration gave. Would the Board have honoured their undertaking?

- (c) Railways, unlike industrial employers, cannot discontinue the less profitable portions of their operations because of rising labour costs. Railway labour cannot "price itself out of its market."
- (d) Railways, unlike some other employers, never have large surplus revenues from which part of an increase in labour costs can be met;
- (e) Bargaining between railway management and labour is imperfectly bilateral: railways cannot lock-out their employees;
- (f) If strikes occur they put pressure on shippers and consumers rather than on employers. This pressure is very great and provokes legislation in the course of a few days.

These factors would seem to justify some differences in the procedures for determining wages and conditions of work. The apparent bargaining power of railway labour is excessive and is directed to the wrong address, i.e. labour bargains with management by pressure applied to the public. But, if arbitration were compulsory in practice, labour would have less real bargaining power than in most occupations and everything would depend on the outlook of the arbitrators. There was, for instance, a significant difference between the conciliation award and the arbitration award in the recent labour dispute. The problem is, therefore, to find some middle way between complete freedom of bargaining on the one hand and compulsory arbitration on the other.

A permanent solution of this problem would have to satisfy several conditions. It would have to be accepted as fair by railway labour. It should remove the apprehension, expressed at our hearings, that railway labour would use unlimited bargaining power to impose conditions which would be grossly unfair to other recipients of income in Canada. It should exonerate railway management from the invidious duty of satisfying the Board that no one could have driven a harder bargain. It should relieve the Governor in Council and Parliament from the duties which they have had to assume in recent disputes.

Two lines of development seem worth exploring. Both aim at giving more reality and more prestige to Conciliation procedures which seem to have become a mere stage in bargaining. The first would consist in bringing the real contestants face to face and allowing the parties interested in lower freight rates to participate in the proceedings. A Board of Conciliation might, in the case of railway disputes, consist of five members, of whom two would be nominated by labour, and one by railway management, while one would be appointed to represent the users of railways. And users, or their spokesmen, might be allowed to present arguments to this Board.

This plan would enable users to express their views while negotiations were still in progress. There would be some difference between the weight of a majority decision supported by users and one opposed by them and this indication of their views might have some influence on further negotiations.

An alternative would be to have not one but three "neutral" or "impartial" members on the Conciliation Board so that its findings would not appear to reflect the outlook of one man. If all three neutral members were of one mind they would carry great weight with the public. If they differed, the public would be better informed of the merits of the dispute than if it were confronted with what was in effect, a one-man decision. The conciliation award is not final. It is essentially persuasive. It would be made as persuasive as possible. Even a difference of opinion may serve to close the gap within which there is a reasonable difference and may in this way guide further negotiation.

The hearings disclosed that there were two possible standards for railway wages in Canada and that the difference between them was, in the aggregate, greater than that between the highest claims to permissive income made by the railways and the lowest claim which was generally conceded. One view is that railway wages should conform to those paid in the United States which are at present much higher. The other is that they should conform to the wages of comparable occupations in Canada. It is easy to find fault with either view. To raise railway wages to the levels prevailing in the United States would create a highly privileged class of labour in Canada. To use the wages of comparable occupations in Canada as a standard would be to rule out the possibility that railway labour should, sometimes at least, be the pioneer in raising these standards. Just as it would be in itself desirable to close the gap between the conflicting conceptions of permissive railway income by some authoritative definition; so it would be to close, by consent, the gap between these two standards for railway wages. The first step would seem to be the adoption of some procedures for determining wages which would be somewhat more judicial than the "pull-devil, pull-baker" method. The two suggestions which have been outlined have this objective in view.

OBSERVATIONS ON THE RAILWAY PROBLEM IN CANADA

1. The following paragraphs are intended to supplement the specific conclusions set out in the Report by giving my own views on railway problems in general. My aim is to look beneath the symptoms of discontent appearing in the submissions to the Commission and to discover some basic principles; to endeavour in short to see the wood as well as the trees.

2. Throughout these Observations emphasis is placed on the desirability of clarity and intelligibility in Canadian railway policy. The end to be attained is that the various parties interested in railway transportation should be conscious not only of their conflicting interests but also of the common interests which transcend these conflicts. Shippers and consumers; labour and shareholders; regional interests and federal taxpayers; the Canadian Pacific Railway and the Canadian National Railway are alternately adversaries and partners. All eight of these parties have a common interest in the maintenance of an efficient system of railway transportation. No one of them expresses his entire objective when he is engaged in negotiations or disputes with one or more of the others. Our own hearings were treated by the parties concerned more as a forum for advancing claims than as a round table for the development by consent of a mutually acceptable policy. If some basic questions can be settled with finality, an occasional friendly conference arranged by the parties concerned might do something to dispel myths and legends which are no longer true and to develop an atmosphere without which constant and costly misunderstandings seem all too probable.

3. What we have done may be compared to equipping the road which the Board of Transport Commissioners must follow with red, green and yellow lights; recommending that some things should be forbidden, others proceeded with and others approached with caution. What we have left undone may be compared to floodlighting the whole road—including those portions which no one has brought to our attention—in order to facilitate the day to day working of the Board and perhaps even make our railway transportation policy intelligible to the people of Canada.

4. In a healthy and mature economy the railway freight rates which shippers pay, together with the fares paid by passengers, should provide the carriers with revenue which will cover their costs, including a reasonable return on their capital, but should not enable the carriers to make exorbitant profits. A rate structure which produces this result can be said to be just and reasonable to the

public and to the railways alike. In its perfect form it would resemble a co-operative enterprise by which various types of shippers, by combining their purchases of transportation services, all obtained rather lower rates than if they acted independently. No shipper would pay less than the out-of-pocket cost of the services he received and none would pay more than the value he attached to the services. The lower of these limits may occasionally be disregarded for reasons of public policy. The higher limit can never be exceeded and it may at any time be reduced if some cheaper means of transport becomes available.

5. Some element of public or national policy is almost always present in a rate structure. It can be seen on a small scale when passengers are carried on branch lines at the same rate per mile as on lines of much greater density, or on a large scale when an entire railway is built with the expectation that it will never yield a revenue which covers its operating costs and provides a fair return on the capital invested in it. It can be seen, too, when some rates are fixed by law so that the burden of any increase in the cost of railway transportation must be borne by some other rates.

6. A rate structure may be designed so as to enable carriers to meet their cost, earn a fair return on their investment and also perform various services at less than cost or even, on their own initiative, undertake enterprises beneficial to the whole economy. While a purist might object that in calling rates which cover these services "just and reasonable" the Board is in effect imposing a tax on shippers to defray their cost, no one is likely to worry so long as the "taxation" is small and the "taxpayers" indeterminate. But arrangements of this sort are likely to be challenged if shippers have to face an increase in rates or railways a decline in their profits.

7. Indeed, national policy in transportation matters, when it appears on a large scale, is not likely to be financed at the expense of shippers. It is not unusual for a state-owned railway to be operated at a loss or, at any rate, without earning a return on the capital supplied by the state; and sometimes an inducement is offered to a privately-owned railway in order to make private interest coincide with national policy. In both these cases the cost of the national policy is borne by the taxpayer.

8. In the course of our hearings various classes of shippers have contended that the railways should be operated as instruments of national policy and that part of the cost of transportation should be borne by the taxpayer. Counsel for the Canadian Pacific Railway argued that "subsidies are uneconomic". Both these views are open to criticism. There are obvious limits to the extent to which national policies can be invoked by particular interests, whether regional or occupational and even the most unchallengeable of national policies may require the use of subsidies to effect a purpose which is seldom, if indeed ever, purely economic. The construction of the Canadian Pacific Railway itself is a case in point. Subsidies may constitute a link between national policy and private enterprise.

9. Taxpayers would object to being called on to finance too many national policies. But the interests of shippers in their business probably outweighed their interests as taxpayers. As federal taxes only were involved no protest was to be expected from those provincial governments which feel that their people have more to gain by federal expenditure than to lose by federal taxation. Most of the provinces which appeared before us were in this position. Quebec and Ontario were not represented at the hearings, nor was the federal taxpayer.

10. A rate structure, once established, is an important factor in determining the economic location of industry and any change in an established structure is likely in the long run to affect the location of industry by making some enterprises

vulnerable to competition. There are, therefore, vested interests opposed to any substantial change and insistent that, as a matter of national policy, it should be avoided or neutralized.

11. At the present time a substantial change is taking place in the Canadian rate structure. As in other countries, trucks (whether operating as carriers for hire or owned by shippers) have deprived the railways of much of the revenue which they had previously derived from the carriage of commodities of relatively high value for relatively short distances. The loss in revenue has to be made good from traffic which is not vulnerable to truck competition and, therefore, principally from the carriage of relatively low valued commodities for relatively long distances. In Canada, more perhaps than elsewhere, the result has been to impose a serious burden on the economies of outlying regions. A demand has arisen that national policy should be directed to arresting this change in the rate structure and that the federal taxpayer should, in effect, come to the assistance of the long-haul shipper of primary products.

12. Something approaching a crisis has occurred as a result of a great increase in the cost of railway transportation which has coincided with fear of a recession from the high traffic volume attained during the later years of the second world war. This increase of cost has forced the railways to seek additional revenue which must of necessity come largely from rates not acutely vulnerable to truck competition. It can come from competitive rates only if the costs of competitors have increased commensurably with the costs of railways.

13. One effect of the crisis has been to revive interest in the possibility of counterbalancing these increases in the cost of railway transportation. In principle cost might be reduced in one or more of several ways: (a) by amalgamation or unification of the railway systems; (b) by enforced co-operation between them; (c) by the elimination of unremunerative services; (d) by technological changes. These possibilities will be examined separately. It should be noted that they have one important feature in common: they all contemplate economies in the employment of labour by requiring fewer man-hours. It should also be noted that if the primary alternative to a reduction in the cost of operation lies in the payment of subsidies, it is the federal taxpayer who is primarily interested in whether economies are effected or not. We have not had the benefit of the taxpayer's views. Shippers are not vitally concerned with reducing a bill which they do not expect to have to pay.

14. Amalgamation has few friends. Various forms of joint operation have been carefully considered and condemned. It is true that the estimate of the future earning power of the Canadian National Railways made by its officials at the hearings was so low that a weary taxpayer might have wondered if a lease to the Canadian Pacific Railway on mutually advantageous terms would have its attractions. The alternative of state ownership of all railways has merits which have commended it to most modern states. But economy of operation, though physically possible, is not among these merits. As an immediate practical policy in Canada both these alternatives can be dismissed.

15. The mild form of co-operation between the Canadian National and Canadian Pacific Railways, enjoined by the Canadian National-Canadian Pacific Act, has been examined in the main body of the Report. The further economies which are expected from this source are very small and it is worth noticing that extensive claims have usually been made only when there was some discussion of amalgamation.

16. The elimination of unremunerative services may take the form of reduction of services or of abandonment. Usually there are vested interests which oppose either of these economies. Theoretically the case for any proposed abandonment is strengthened whenever the cost of railway transportation increases. In effect the opposition amounts to a contention that the service,

in spite of its unremunerative character, should be maintained for reasons of public policy. The question is semi-political for there seems to be no way of making those who want the services pay for the cost of providing them.

17. Less objection is usually taken to technological improvement. But most improvements require the investment of new capital and the economies are ordinarily not immediate. For new capital to be forthcoming it must be assured of a fair return, and no such assurance is convincing unless the capital already invested is receiving a fair return, or unless some security which ranks before common stock can be sold.

18. An increase in the volume of traffic, such as has occurred with the progress of rearmament, may also be looked on as something which decreases the unit cost of transportation or prevents that cost from increasing. It is the only type of reduction in cost which does not involve a reduction in man-hours of employment. If it could be expected with confidence over a long period of time what has been called the crisis in railway transportation would disappear. A period of rapid and sustained economic expansion might permanently transform the whole problem of railway transportation in Canada.

19. Apart from the possibilities which have been reviewed in the five preceding paragraphs, the increase in transportation costs must be accepted as a fact and dealt with by providing the carriers with revenue. Its main cause has been the general increase in prices and wages commonly called inflation. Canadian inflation has, happily, little but the name in common with the disastrous inflations which have occurred in countries ravaged by war. It was even possible for witnesses to contend that rates fixed in terms of dollars twenty-five years ago should remain unchanged, or that rate differentials existing before the second world war should remain constant in terms of dollars. However, even the Canadian inflation has benefited some industries and injured others. Few manufacturers, for instance, complained of increases in freight rates. Inflation has taken some time to exert its full effect on railway costs and its most spectacular effects on those costs have taken the form of wage increases. This process is still continuing. It should be distinguished from increases in cost incidental to shorter working hours for shorter hours are not a necessary consequence of price increases.

20. The inflation magnifies, in terms of dollars, any changes imposed on the rate structure by truck competition and also any anomalies in the rate structure. Its main effect is probably psychological. Everyone accepts with equanimity and explains plausibly any changes in price which enlarge his income, and complains bitterly of any changes which increase his expenses. Everyone tends to discount as transitory any advantage which he may receive from inflation and thinks of the disadvantages as more likely to persist. Particularly is this true of the high prices which producers of primary products may receive, on the one hand, and the freight rates which they are called on to pay, on the other. Frequently, in the course of the hearings fear was expressed that prices would collapse but that freight rates were here to stay.

21. There were other sources of apprehension as well. The enormous bargaining power of labour inherent in its ability to tie up the transportation services on which the very life of the country depends filled some witnesses with alarm. While there was no evidence that this power had been used in an irresponsible, or even in an arrogantly selfish way, it was feared that it might be so used.

22. Side by side with fear, as a psychological factor in the problem of railway transportation, should be placed the well established myth of regional injustice which flourishes in some regions and which can be at times the root of disheartened self-pity.

23. These psychological factors, which are never quite without some plausible basis in fact, help to create an atmosphere in which distrust and suspicion

predominate and there is an irresistible temptation to pick on someone, be it the railways, be it labour, or be it Central Canada as the wrong-doer. The readiness of governments, and indeed of the railways themselves, to come to the assistance of an industry in distress is forgotten. The result is that there is little sympathetic understanding of the difficulties of others and little readiness to face what is after all a common problem in a spirit of mutual forbearance and mutual aid. It is only by making Canadian railway policy intelligible to the people that more cordial relations can be created. To be intelligible the policy must itself be clear.

24. The crisis in railway transportation, magnified, in appearance at least, by the inflation and by fear of further increases in the cost of railway operation, has been aggravated by the position of the two major railways. The Canadian National Railways is state-owned. Any deficiency in its revenue is met sooner or later by federal taxpayers because it takes the form of inability to pay interest on bonded debt. If public interest required it this railway system could operate with rates which did not cover its costs. For instance, the Board might fix rates which cushioned the shock of the inflation to the industries of Canada or postponed the adjustments in the rate structure made necessary by truck competition. The Canadian Pacific Railway is privately owned and cannot be expected to forgo adequate revenues, if it is economically possible to obtain them. Indeed it cannot exist without adequate revenue. The smaller railways are in a similar position. It follows that the general rate level must be set with the needs of the Canadian Pacific in mind. No other standard has been seriously suggested.

25. While it is possible to imagine conditions under which some other standard might be used, it is hardly possible to imagine these conditions arising without the general position of Canadian railways requiring new legislation to guide the Board. Admittedly the future is unforeseeable. But the action of today must be based on probabilities. There is no probability of the Canadian Pacific Railway ceasing to be the "yardstick" for rate-making.

26. It is doubtful if the change in the position of the Canadian Pacific from being one railway among several whose needs had to be considered to being the unique standard by which the general level of rates can be judged, was foreseen when the Canadian National Railway System was created. It is quite possible for a state-owned railway system to be the sole standard for setting rates, as indeed is the case in the United Kingdom today, where a definite revenue requirement has been set by law. It is equally possible to set rates with regard to the position of a large number of railways which are privately owned, as is the case in the United States. Each railway is left with an incentive to make the largest revenue it can within the freight rate level set for all. But it would be impracticable to set a level for a privately owned railway which was the only railway in the country, without making that railway a strictly regulated public utility. The same thing is true if a privately-owned railway (even though it is not the only railway) is of necessity the sole standard for fixing rates, subject to the ability of railway users to pay. Such a railway occupies a peculiar position. It is bound to become a strictly regulated public utility and it is in danger of being the direct object of attack by all those interests in the country which desire low freight rates. The Canadian Pacific was never intended to be such a railway but that is what it has become. Failure to recognize this simple fact can lead to much confusion of thought.

27. The peculiar position of the Canadian Pacific is not generally accepted and there is general reluctance to recognize it except as transitory or provisional. It is easy to understand this reluctance. The railway itself cannot wish to be treated as a strictly controlled public utility, used as a standard in setting rates and compelled to bear the brunt of all attacks on freight rates. Incentive lies at the heart of private enterprise and to renounce the possibility of incentive

is unpleasant. Shippers, on the other hand, are reluctant to renounce the possibility of some outside standard by which the revenue requirements of the Canadian Pacific might be reduced. Parts of the country where the Canadian Pacific does not operate at all may resent rate levels designed, in form at least, to meet its requirements. There is every temptation to disregard or conceal the position of the Canadian Pacific Railway by ingenious circumlocution or by legends from the past. In the 21% Case the Board repeated what it has said in the Western Rates Case: "Our function is to set rates which are just and reasonable irrespective of what any company is worth or is not worth". Rates are said to be just and reasonable "to the railways". Increases are needed to "redress an imbalance" between costs and revenues. It is even suggested that the Canadian National Railways may some day develop to a point at which its requirements may be taken into account in setting rates. Yet there is much to be gained by facing the unpalatable fact boldly and dealing with it frankly and definitely.

28. The advantages of placing beyond dispute the net income which the Canadian Pacific Railway should have an opportunity of earning from its railway operations are substantial.

(a) A most contentious topic would be removed from general revenue cases and these could then be handled with greater expedition as we have recommended elsewhere.

(b) A standard would be established by which the future earning power of the Canadian National Railways could be estimated and on which a rationalized recapitalization of that railway system could be based.

(c) The crucial problem of how to provide the railways with adequate revenues without imposing too great a burden on the economy, or any section of the economy, could be isolated and dealt with as what it plainly is: An issue between those who use the railways, those who depend upon them for their livelihood, and the taxpayers.

(d) Once the prospective earning power of the Canadian Pacific Railway is established the problem of ensuring the availability of new capital can be attacked realistically.

(e) In short the financial aspects of the railway transportation system of Canada would be clarified and made intelligible to the general public, with great advantage to all parties in promoting goodwill and mutual understanding.

29. Desirable as it is to establish a permissive income for the Canadian Pacific Railway it is no easy task. There are obvious difficulties common to all railways: The choice between historic investment and present value as a basis for determining the capital investment; the proper computation of costs; and the determination of a rate of return which will be flexible enough to take into account both the occurrence of "fat" and "lean" years and the need for incentives which will protect far-sighted investment that foregoes present gains in the hope of future profit. In addition there are serious difficulties peculiar to the Canadian Pacific Railway. It was not designed as a public utility yet that is what it has become in so far as its railway operations are concerned. It was certainly not designed as a standard for setting the general level of freight rates in Canada, and, even after freight rates in general were made subject to the jurisdiction of the Board, the accounts of the Canadian Pacific Railway were not kept on the assumption that it was to become the measure or yardstick for freight rates in Canada. Indeed, it was hardly contemplated, at that time, that the Board would have to concern itself with the general level of freight rates, for this problem had not yet arisen.

30. Now that the Canadian Pacific Railway has, of necessity, to be used as a yardstick for the general level of freight rates some important and contentious issues must be settled. These issues include:

- (a) The interpretation to be placed on the transactions between the Canadian Pacific Railway and the Government of Canada, in so far as they affect the extent of the investment on which a return should be earned;
- (b) The obligations, if any, incumbent on the railway as the result of the assistance received in the construction of the Crowsnest Pass Line;
- (c) The distinction between the railway investments and railway income of the Canadian Pacific Railway on the one hand and the non-railway investment and non-railway income on the other.

The Canadian Pacific Railway contends that it is entitled to earn from its railway operation alone a fair return on the capital invested in its railway properties. The critics do not concede this claim and they take a different view from that of the railway of the extent of the investment.

31. If crucial decisions have to be made on these issues it is, as matters stand today, the Board which must make them, subject to appeal to the Governor in Council and, on questions of law, to the Supreme Court. Yet it is doubtful if it was ever contemplated that the Board should deal with matters of this sort. In the course of nearly half a century it has shown little disposition to do so. If an issue of this magnitude has to be faced there is a strong case for giving the Board legislative guidance. It must be borne in mind that the decisions will affect the fortunes of all privately-owned railways and the earnings of the Canadian National Railways as well. They are decisions of a permanent nature and it is difficult for them to receive due consideration in the course of a specific revenue case.

32. It would be in accordance with sound principles for decisions of such major importance to be made by Parliament itself. It alone can speak with finality. It might enact legislation to confirm an agreement reached between the Government of Canada and the Canadian Pacific Railway; or it might ratify decisions which had been referred to arbitration; or it might act on the advice of the Board itself. The simplest type of action would be to define by law the railway investment of the Canadian Pacific Railway as of some definite date leaving it to the Board to see that subsequent investments and subsequent depreciation were duly recorded and to determine from time to time what rate of return should be allowed, whether in a particular year or "taking one year with another". The result would be to fix, within flexible limits, the permissive income of the Canadian Pacific Railway. While economic conditions might lead to a low income being fixed in a specific year, or to the railway being unable to earn its permissive income, it would be made clear that no limitation should be imposed, either by legislation or by action of the Board, which made the attainment of the permissive income impossible. But such a limitation might be imposed as a matter of public policy provided that adequate compensation were paid so that the ability of the railway to earn its permissive income was not impaired.

33. In fixing a rate of return to be applied to a rate base which had been independently and definitively determined, the Board would not have to raise anew the issues of which legislation had been designed to dispose. Indeed, it would not have to consider the individual characteristics of the Canadian Pacific Railway. It would fix the rate which it considered appropriate in the circumstances for a railway to earn on its investment. In so doing it would have to face the problem of "fat" and "lean" years and the problem of incentives. But there would be no question of multiplying the rate base (determined by legislation) by the rate of return suggested by the railway in order to see whether the result would be to give the Canadian Pacific Railway an income adequate for its "requirements" or an income which would enable it, in the market of the day, to sell its common stock at or above par.

34. The assurance of an opportunity to earn a definite income does not necessarily imply that the prospect of earning that income should be attractive to new equity capital. Yet a sound transportation policy in Canada requires that the privately-owned railway shall be able to raise the capital needed to maintain the quality of its services without recourse to measures which are financially unsound. Alternatives to increasing the permissive income would include: The issue of equity securities below par; the purchase of equity securities at par by the government of Canada which could borrow the necessary funds for less than it would expect to receive by way of dividends; and the purchase of income bonds by the Government. Once a permissive income had been determined any one of these methods could be used if necessary without there being any suggestion that the railway was being subsidized.

35. In fact, the determination of a permissive income for the Canadian Pacific Railway would have the advantage of placing in their true light any subsidies which Parliament might be prepared to grant at any time in order to relieve the burden on freight rates. Such subsidies would not increase the permissive income of the Canadian Pacific Railway but they would provide a portion of it thus reducing the amount which would have to come from freight rates. They would, therefore, be in no sense subsidies to the railway even if they were paid in lump sums annually. They need not be related to any particular rates or to rates in any particular region. The Board in fixing "just and reasonable" rates would almost automatically relieve freight rates where relief was most needed. The position of other privately-owned railways would require special consideration in accordance with their circumstances.

36. A subsidy of the sort described in the preceding paragraph can be compared to a negative income tax. A corporate income tax increases, while a subsidy reduces, the revenue which must be obtained from freight rates. The comparison is not made for the sake of a paradox but to lead to a very practical conclusion. A moderate subsidy could be accorded to freight rates in general and could be extended equitably to all privately-owned railways by simply foregoing the corporate income tax on railway income. This tax, as at present imposed, is treated as part of the railways' expenses and therefore is passed on in freight rates to shippers or consumers. It is *prima facie* unreasonable to tax freight rates if these rates are considered too high, and it would be clearly unreasonable for the same authority first to tax them and then to subsidize them.

37. At present the situation is curious. The corporate income tax is carefully charged to freight rates, so that there is no diminution in the income available for dividends. But when a deduction was allowed in respect of the personal income tax to recipients of dividends from Canadian corporations, the shareholders were compensated in so far as railway income was concerned for a loss which they had never suffered. This anomaly could easily be eliminated if the corporate income tax were not imposed on railway income.

38. The suggestions made in the preceding paragraphs would simplify general revenue cases and conduce to their expeditious settlement. Once a rate base had been defined, the Board would have to determine the appropriate rate of return for a railway to be allowed to earn on its investment in the circumstances of the day. In practice it would no doubt consider whether or not there were compelling reasons for changing the rate which it had approved in a previous case. It would then multiply the statutory rate-base of the Canadian Pacific Railway by this rate of return so as to calculate the income which that railway should be allowed to receive. It would then deduct any subsidies which Parliament might have provided and so determine what part of the railway's income should come from its railway earnings. Finally, it would consider the proposals of the railways for the apportionment of the burden of providing these earnings among the various users of the railway. At this point the conflicts of

interest would appear clearly as what they really are: Conflicts between various classes of shippers. Dissatisfied shippers might ask Parliament for a larger subsidy, but their demand would be held in check by their ignorance as to which class of shipper would benefit by any increase; for a larger subsidy would merely diminish the burden to be apportioned among shippers and would leave the Board free to apportion this burden as it saw fit.

39. It remains to consider the position of the Canadian National Railways. This great railway system has much to gain from making Canadian railway policy clear and intelligible. It should be frankly recognized that:

(a) The Canadian Pacific Railway is, in respect of its railway operations, a regulated public utility entitled to an opportunity of earning a fair return on its investment;

(b) This requirement will determine the general level of freight rates in Canada;

(c) The Canadian National Railways is a socialized enterprise which must operate certain properties and provide certain services irrespective of their commercial merits;

(d) These properties and these services are of such a character that comparability with the Canadian Pacific Railway (or with any railway) is not possible.

(e) It is not practicable to make the capital structure of the Canadian National Railways such that comparability with the Canadian Pacific Railway can be established so that each railway will serve as a test of the efficiency of the other.

In short, while the Canadian Pacific Railway as a privately owned public utility is entitled to an opportunity to earn a fair return on its railway investment; the Canadian National Railways as a socialized enterprise should be expected to do the best it can at rates fair to the Canadian Pacific. The attempt to establish comparability, either to excite emulation or to make one railway a check on the other should be definitely abandoned. It is not practicable to arrange suitable handicaps for such a race.

If this difference is recognized, the capital structure of the Canadian National Railways could be greatly simplified. It could be made equal in amount to the earning power of the railway capitalized at a low rate of interest. It could consist of bonds in the hands of the public and of equity securities in the hands of the government. The management might be allowed considerable freedom in building a surplus or reserve.

40. To avoid any inconsistency with the particular conclusions with which I have associated myself in the main body of the Report I have recorded a few reservations: (a) I have not joined in the general condemnation of the railways at the end of Chapter I; (b) I have dissociated myself from the reasons given by my colleagues for not approving of the proposed amendment to the Railway Act directing the Board to see that freight rates give the Canadian Pacific Railway a fair rate of return on its railway investment. It has seemed to me necessary to supplement our specific conclusions with some description of the overall position to which these conclusions are related because I feel that, unless I make some such statement, I shall not be contributing everything that I can to the discussion of Canada's transportation policy.

* MEMORANDUM ON TRANSPORTATION BY DR. H. A. INNIS

The place of the St. Lawrence Great Lakes system in the history of transportation in Canada has long been recognized. Attempts to strengthen its competitive position with other approaches to the continent, such as the Hudson River, Hudson Bay and the Mississippi River, characterized the French regime, the British regime and the federal system of Canada. The Rideau Canal was built under the British regime as a means of ensuring an alternative route to the St. Lawrence in case of war with the United States. The Welland Canal was built to offset the pull of the Erie Canal on the upper lakes to New York. The Act of Union of 1840 provided a financial base for completion of the St. Lawrence Canals to a depth of nine feet above Montreal, with the same objective.

The St. Lawrence system built up to compete with New York became obsolete following the construction of railways in the United States. In turn it became necessary to construct railways in Canada, and the Grand Trunk was designed to offset the limitations of the canal system in the competition for traffic. Its difficulties as a line complementary to the waterways, sharing their traffic, and influenced by their tolls, and extending its eastern terminus to Portland on the Atlantic seaboard as an open port, compelled it to extend its western lines to a terminus at Chicago for traffic from the middle west.

To offset the handicaps of a railway and water system on the St. Lawrence, Confederation was designed to an important extent to improve the waterways and to extend control eastward by construction of the Intercolonial to Maritime ports and westward to the Pacific coast. The Intercolonial was completed as a government undertaking from Halifax to Riviere du Loup in 1876 and was ultimately extended to Montreal. To carry out the terms of Confederation with British Columbia in 1871 which required that a railway be completed to the Pacific coast, sections of railway were built by the government and handed over with subsidies in land and money to the Canadian Pacific Railway. A transcontinental railway from Montreal to Vancouver was completed in 1885 and extended eastward across Maine to the open port of Saint John, New Brunswick, in 1890. On the St. Lawrence the upper St. Lawrence canals were deepened to fourteen feet by 1901 and the ship channel below Montreal of thirty feet by 1906. By the deepening of canals and the construction of railways Montreal after 1900 became an export centre for wheat from Western Canada and the Western States.

Expenditures in construction of railways and canals on a vast scale involved extensive financial support by the government and a marked increase in public debt. Interest on the debt was kept down by guarantees on loans by the Imperial Government and by other devices. Canal tolls were held down by competition with American canals and with railways, were abolished in 1903 and were of little consequence in meeting interest on the debt and operating expenses. Revenue could not be obtained by a tax on exports of staple products and to a very large extent came from customs tariffs. In the words of A. T. Galt, Minister of Finance in 1862, with reference to the increase in tariffs, particularly in 1858, "The government has increased the duties for the purpose of enabling them to meet the interest on the public works necessary to reduce all the various charges upon the imports and exports of the country. Lighthouses have been built, the St. Lawrence has been deepened, and the canals constructed to reduce the cost of inland navigation to a minimum. Railways have been assisted to give speed, safety and permanency to trade interrupted by the severity of winter. All these improvements have been undertaken with the twofold object

**This memorandum is intended as an elaboration of the basic argument behind the conclusions of the Report.*

of diminishing the cost to the consumer of what he imports, and of increasing the *net* result of the labour of the country when finally realized in Great Britain."*

Confederation involved a compromise between the low tariffs of the Maritimes and the high tariffs of the Canada's, but following completion of the Intercolonial Railway in 1876 the National policy was introduced in 1879 to give protection to Canadian industry, to guarantee traffic for Canadian railways and canals, and to secure revenue to meet deficits and interest on debt. The Canadian Pacific was built across Western Canada close to the American boundary and later through the Crowsnest Pass across southern British Columbia, to check actual and potential competition from American lines and to exploit a market protected against American competition by the tariff. The railway was guaranteed control over the long haul of manufactured products from the industries of the St. Lawrence Great Lakes region to Western Canada and British Columbia, and of wheat, lumber and other products from Western Canada and British Columbia to the East.

The rate structure of the railways reflected the financial problems of transportation. Low rates on exports via canals, particularly after the abolition of tolls, were paralleled through competition by low rates on exports via railways. The customs tariff with particular significance to canals was paralleled by high freight charges on imports of manufactured products. Emphasis on the value of service principle in the freight rate structure was accentuated by the effect of water competition. The general characteristics of financial policy and of the freight rate structure were extended from the St. Lawrence region to Western Canada. High rates on exports of grain by the Canadian Pacific Railway were met by protests from grain growers, by the introduction of the Crowsnest Pass agreement in 1897 and by the agreement in 1901 between the Province of Manitoba and the Canadian Northern Railway. Low rates on exports of grain were paralleled by high rates on manufactured products imported into Western Canada, to some extent offset by the statutory regulations regarding these products under the Crowsnest Pass agreement. Problems incidental to the high rates on internal trade and on imports of manufactured products to the prairie region led to the establishment of the Board of Railway Commissioners and to a series of decisions narrowing the discrepancy between rates in Western Canada and in Eastern Canada, and to demands for equalization of rates. They led further to the construction of competing railways, the Canadian Northern largely through the support of the provincial governments, and the Grand Trunk Pacific and the National Transcontinental of the Federal Government.

A transcontinental railway system such as the Canadian Pacific Railway with a rate structure which emphasized the value of service principle, compelled its competitors to develop similar transcontinental railway systems. Territory to the north of the Canadian Pacific line, built near the Canadian boundary to check American competition, was available for occupation by rival systems. In order to secure a share of the more remunerative traffic in westbound manufactured products it was necessary for the Canadian Northern Railway to extend its main line eastward from the prairies to the St. Lawrence region and westward through the Yellowhead Pass to Vancouver. In Eastern Canada, on the other hand, the Grand Trunk attempted to obtain control over the more remunerative westbound traffic in manufactured products to Western Canada and to build up an eastbound traffic in grain by extension westward. Mr. C. M. Hays stated at a meeting of Grand Trunk shareholders on March 8, 1904, "The Grand Trunk Railway is in this rather ridiculous position from a business standpoint of gathering up traffic from the largest and most prosperous portion of Canada, taking it to North Bay, our connection with the Canadian Pacific, and from there giving it to the Canadian Pacific to haul across the country into this

*Sessional Papers of the Legislative Assembly of the Province of Canada 1862, Sessional Paper No. 23.

prosperous and rapidly developing district we are speaking of. And what do we get back? Nothing at all." The National Transcontinental from Moncton to Quebec and Winnipeg was built by the Federal Government to be leased to the Grand Trunk and to connect with its subsidiary the Grand Trunk Pacific from Winnipeg through the Yellowhead Pass to Prince Rupert. The two new transcontinental systems were encouraged by the metropolitan ambitions of Toronto in the case of the Canadian Northern Railway and of Quebec and the Maritime ports in the case of the Grand Trunk to offset the position of Montreal in relation to the Canadian Pacific Railway Company.

As a result of difficulties of securing capital especially following the outbreak of war in 1914 the Drayton Acworth Commission in a majority report recommended that the Federal Government assume control of the two new transcontinental systems. Later legislation creating the Canadian National Railways provided for inclusion of the Intercolonial, the Grand Trunk, the Grand Trunk Pacific, the National Transcontinental and the Canadian Northern in a single system. It was the task of Sir Henry Thornton to integrate the various units with the result that long haul traffic between Eastern Canada and the West formerly dominated by the Canadian Pacific was shared with the Canadian National. In the gigantic struggle of the twenties the Canadian Pacific made vigorous efforts to maintain and to strengthen its position in the face of rapid expansion of the Canadian National. As a result of the depression of the 1930's the Duff Commission recommended that steps should be taken to prevent waste and duplication. The Canadian National-Canadian Pacific Act which followed was in itself testimony to the emergence of a position of relative equilibrium between the two systems.

— I —

A transcontinental railway network developed in relation to a rate structure which emphasized the value of service principle with high rates on manufactured products and low rates on raw materials invited competition from other carriers, in particular from the motor vehicle supported by the provinces especially in the construction of roads. In the industrial areas of the St. Lawrence the long run effects of water competition on the rate structure in emphasizing the value of service principle, left the railways and in particular the Canadian National exposed to truck competition. Trucks were adapted to the handling of goods in the upper classifications of the freight rate structure. Highly remunerative traffic in goods of small bulk and high value hauled relatively short distances was lost by the railways to trucks able to exploit the demands for speed, for elimination of excessive handling, and for small inventories. Moreover, trucks were linked to lake and river steamships in the handling of more bulky commodities. As a result of its effectiveness in competition with railways the trucking industry expanded with great rapidity. In 1947 the provinces of Ontario and Quebec had 56.8% of the total surfaced roads in Canada or 82,800 miles, 50.2% of the total motor trucks registered in Canada or 213,666 and 85.5% of the motor buses or 5,843. Of total trucks of 8½ tons and over reporting in Canada in 1947 of 2,896, Ontario had 2,126, and of a total 4½ to 8 tons of 3,997, Ontario had 2,146. The effect on the railways was described by an official of the Canadian National Railways who appeared as a witness for the Railway Association of Canada. He presented estimates of net losses in revenue from the railways to the trucks of 70 to 80 million dollars and other losses of net revenue due to the establishment of competitive rates to keep traffic on the railways of 50 millions or a total of 120 to 130 million dollars yearly.

The eloquent silence of Ontario and Quebec in rate cases and in the hearings of this Commission points to the effectiveness of truck and water competition in keeping down rates in the St. Lawrence region. More extensive and better

highways bring an increase in the density of traffic, greater diversification of industry, lower interest rates on capital, and even greater extension and improvement of highways. Ability to escape from the full impact of increases in railway rates accentuates the burden of these increases on other regions and compels these regions to concentrate on highway construction as a means of escaping from the burden of higher short haul rates and long haul rates. The costs of road transportation of products for export are lowered and contribute to the long haul traffic of the railways. Trucks, for example, bring grain by road at lower costs and for longer distances to elevators for shipment by rail than horse drawn vehicles. Inability to escape the increased burden of higher rates on long haul rail traffic limits the financial strength and restricts the diversification of industry in these regions. The effectiveness of truck competition in the St. Lawrence region by weakening the financial resources of other regions, limits their possibility of escape from the burden of higher railway rates by means of road construction and motor vehicles.

In both the eastern and the western regions the provinces by regulation and lack of regulation have attempted to increase truck competition with the railways. In New Brunswick regulation is admittedly ineffective. In Saskatchewan and Manitoba regulatory boards keep truck rates below railway rates. Following the increase of 21% in rail rates the Manitoba board allowed trucks to increase rates by only 15%. In an attempt to offset the effects of truck competition, the Canadian Pacific Railway acquired control of Dench truck lines in Western Canada, including British Columbia. The province of Alberta has intimated that it will not give licences for trucks controlled by the railway. Though operating under regulations of provincial boards the railway has been able to take advantage of the lack of regulation over interprovincial truck traffic, and interprovincial truck rates between Manitoba and Saskatchewan have been brought up nearer the level of railway rates. Higher interprovincial rates are justified in part by necessity for example in purchasing double licence plates but they present obstacles to trade between provinces and favour intraprovincial trade. It is of concern to the Federal Government to institute machinery which will collect full information on the extent of interprovincial trucking.

— II —

The effects of the undermining of the rate structure by truck competition particularly in the St. Lawrence region were evident in the development of close co-operation between the railways. A witness for the Canadian Pacific Railway described the railway situation in Canada as a duopoly. As contrasted with a monopoly a duopoly may exist "as long as there is a single variable of policy concerning which the two duopolists do not have an explicit agreement." "Approximately the maximum gain to each duopolist is attained when the two do collaborate and set a near monopoly price."* In other words "if sellers have regard to their total influence upon price, the price will be the monopoly one," (Chamberlain). Characteristic of a duopoly, the two railways are each intent on avoiding the appearance and charge of monopoly, on emphasizing the appearance of competition, and in exaggerating their dissimilarities. The contrast between private enterprise and government ownership has been stressed partly as a device to emphasize the appearance of competition but it cannot obscure the essentially monopolistic character of a duopoly.

Even before the release of controls by the Wartime Prices and Trade Board the railways applied for a horizontal increase in rates of 30%. In contrast with the lack of interest of the provincial governments of Ontario and Quebec

*G. J. Stigler, Notes on the theory of duopoly, "Journal of Political Economy", August 1940, P. 521.

in this rate case, incidental to the effects of truck and water competition in the St. Lawrence region, the other provinces, unable to escape from an accentuated burden of increased rates, in spite of diverse efforts, displayed an intense interest reflected in prolonged opposition over a long period and in the eventual decision of the Board of Transport Commissioners to grant an increase of 21% in 1948. A second demand for an increase of 20% of 121% or 45% above the 1946 level was again opposed but met by a series of increases of 8% in 1949 and 8% and 4% in 1950.

The nature of the impact of horizontal increases on other regions than the St. Lawrence varies with the geographic character of the region, of its resources and of its markets. The market, through the costs of transportation to it, will determine the resources which will be developed and the methods by which they will be produced. The rate structure will be adapted to the production and export of commodities for the market and will emphasize specialization of production in low rates on primary products and higher rates on imports of manufactured products of a largely protected industry. Statutory rates such as the Crowsnest Pass rates, and the customs tariff, reflect and accentuate the emphasis of the rate structure on specialization by maintaining low level rates on primary products or grain and increasing the burden on imports of manufactured products. The prairie economy by an increase of 45% in rates on commodities other than grain, coal and coke is compelled to specialize more intensively on the production of grain. The enormous capital equipment built up in relation to grain production is used to greater capacity and the burden of the rate increase probably carried more easily than would have been the case with other types of adjustment. While the burden was probably carried more easily because of intense specialization, for the same reason it could not be shifted. Indeed in the long run increased specialization involves handicaps peculiar to it. Evidence was presented to suggest that low rates on livestock from Western Canada had been favoured by the railways because of their contribution to the long haul traffic to the detriment of the packinghouse industry in Western Canada. The effects of intense specialization incidental to the importance of the long haul and the horizontal increase in rates become evident in types of vulnerability such as characterize dependence of the prairie provinces on grain in fluctuations in yield or in the decline of population in Saskatchewan in part a result of increasing industrialization of grain production. A substantial horizontal increase involved a direct burden on the economy and accentuated a type of economy more exposed to direct and indirect burdens.

In regions other than those under the Crowsnest Pass rates, the effects of a horizontal increase in rates on various classifications are shown more clearly. Irrespective of the varying effects of rising prices or inflation on different commodities, a rate structure emphasizing the value of service principle will include rates on commodities in higher classifications which increase more rapidly in absolute amounts than those in lower classifications. An elastic element is introduced by which the rate structure is stretched upwards from the bottom. Assuming inflation in which prices of finished products rise more rapidly than those of primary products the effect is accentuated. Indeed commodities paying the lowest rates may be unable to stand the increase and special provisions may be introduced stretching the increased rates on such commodities downward as in the case of flat rates on coal. The burden of horizontal increases becomes most acute on commodities in the highest classification hauled the longest distances. Specialization, for example in the production of lumber and other products in British Columbia, will be intensified, as in the case of grain in the prairie provinces, as a result of a horizontal increase but since no statutory rates are involved costs of transportation may narrow the market. The importance of lumber and its susceptibility to price changes incidental to its importance in the building

industry and its position in the business cycle makes for an unstable economy and probably contributes to the difficulties inherent in the rapid depletion of forests. The costs of imports of manufactured products by the long haul will increase most and it is perhaps significant that the submission of the province of British Columbia emphasized the disadvantages of the value of service principle of rate making and the importance of the cost of service principle. It is probably more than a coincidence that the horizontal increase of 21% was followed by the removal of the mountain differential. It is not less a coincidence that following its removal Alberta has complained most of the effects of violation of the long and short haul principle.

In the Maritime region specialization has developed in primary products chiefly in relation to export markets, and in manufactured products in relation to the Canadian market. The position of highly specialized Maritime industries* was strengthened by the Maritime Freight Rates Act which reduced rates within select territory as well as rates from select territory westbound 20% below the level in 1927. They were still further encouraged by the demands of the war and the freezing of railway rates under the Wartime Prices and Trade Board. A horizontal increase in freight rates has brought difficulties to Maritime industries dependent on the long haul to Canadian markets and in some cases on the long haul of raw materials from other parts of Canada. The bulky cheap primary products of the farm, the forest and the sea for export have been exposed to the fluctuations of world prices and to the effects of relatively rigid costs determined in a protected market. As a result of the difficulties of the world market and the shift to the domestic market, chiefly the St. Lawrence region, problems of adjustment to the demands of that market and of freight rates on a long haul become acute. Effective competition in the St. Lawrence region involves concentration on highly specialized products less effectively produced in that region and not exposed to competition from the products of British Columbia and Western Canada. Specialized production in British Columbia as developed under the demands of the long haul to the St. Lawrence region, for example, will restrict the market for similar products from the Maritimes. Limitations of the Central Canadian market for Maritime primary products have been evident in the use of various expedients such as the payment of subsidies on fish, assistance in shifting to the production of new varieties of apples, and floor prices for potatoes. Horizontal increases on freight rates on Maritime primary products enhance the difficulties of competition in the Central Canadian market particularly as these products are characterized by fluctuations in prices and are sold on the basis of delivered prices rather than free on board. Commodities in lower classifications of the freight rate structure such as low end hardwood and low grade coal are faced with acute difficulties and bulky commodities such as turnips and potatoes are exposed to additional hazards not excluding a decline in rates incidental to truck competition on the products of the central region. As in the West a horizontal increase on specialized products whether manufactured or primary was perhaps borne more easily but it involved further emphasis on specialization and assumption of a burden which could not be shifted. Nor is it probable that a horizontal increase can be carried as easily in the West in spite of the advantages of water competition. Problems of production are much more complex than in Western Canada, involve to a greater extent competition with the products of Central Canada, and include low-priced products seriously affected by a horizontal increase.

*Industries dependent on long hauls in the Canadian market have resorted to administered prices on their products in which freight charges were absorbed in a fixed price. Special types of products of high value and small bulk on which freight charges were a small percentage of sale prices were particularly suited to this device. Industries located in the St. Lawrence region have advantages in the development of administered prices denied to those in other regions as is suggested in the importance of mail order stores. Administered prices of such goods as are sold through catalogues have developed to offset the inequities of the rate structure and the difficulties incidental to long hauls to a nationwide market. Goods ill adapted to the use of administered prices are more directly exposed to the problem of rates.

Diversification and consequent stability in regions other than Central Canada are difficult to achieve in the face of persistent pressure from the railway rate structure. The interest of the railways in the long haul is supported by the interest of powerful industrial organizations which have developed under a protective system in the St. Lawrence region at the expense of weaker industries in other regions. Competitive rates in Central Canada and the customs tariff strengthen the railways in their monopoly of the long haul. A case was cited in evidence in which railway rates on cement from Paris, Ontario, to Vancouver were adjusted to the customs tariff to keep out English cement.

— III —

The impact of horizontal increases on the long haul has been reflected in increased emphasis on specialized production in regions other than the St. Lawrence. In turn emphasis on further specialization strengthens the monopoly position of the railways in relation to the long haul and in relation to their displacement from short haul traffic by truck competition. The interest of the railways, particularly of the Canadian Pacific, in long haul traffic is in part a result of greater utilization of capacity of road bed, equipment and rolling stock. Concentration on their monopoly of the long haul enables the railways to reduce expenses and to increase revenues. The remunerative character of long haul traffic was evident in the statement of a witness of the Canadian Pacific Railway that transcontinental rates below the average minimum earnings of 35.3 cents per car mile in 1948 were justified in terms of revenue. Transcontinental railways have been particularly concerned with long haul traffic giving the largest revenue in relation to expenses. The importance of the long haul of primary products moving in one direction is reinforced by the even greater importance of the long haul of finished products moving at higher rates in the opposite direction and by greater utilization of plant. Truck and water competition in Central Canada and in other regions compels the railways to rely on the long haul to an increasing extent and emphasizes the importance of the customs tariff in restricting competition from American lines.

The duopolistic character of the railways involves concern with revenue rather than traffic. Railways protected by tariffs and monopoly areas like other protected industries are more concerned with revenue than volume. Loss of protection in certain areas through the development of truck competition has increased the need for further reliance on protected areas and on a monopoly of the long haul. A witness for the Canadian National Railways held that it had become extremely difficult to build developmental lines because of the loss of revenue incidental to truck competition. Since this system in its location is more concerned with the opening of new territory than the Canadian Pacific the implications for economic expansion become obvious. Transcontinental railways have enormous administrative problems and are necessarily concerned with the transcontinental point of view. Emphasis on the long haul and concern with rates and revenue rather than traffic involves a neglect of regions and compels both federal and provincial governments to take an active interest in the problems of production and traffic. Special legislation and statutory rates have been concerned with regional difficulties as have such devices as price floors, feed grain assistance and special subsidies, for example, on coal.

— IV —

As part of a duopoly, with enormous economic and political power supported by protected industry, and as particularly affected by truck and water competition in the St. Lawrence region, the Canadian National Railways is directly concerned in strengthening its control over the long haul and in the bias toward

finance rather than traffic shown in its concern with recapitalization. Because of its position as a predominantly eastern line and of the importance of competitive rates it refused to add the final 4% granted by the Board of Transport Commissioners to competitive rates even though this prevented the Canadian Pacific from accepting it as well. Its aggressive attitude in favouring extension of agreed charges again reflected the importance of truck and water competition.

As the owner of the Canadian National Railways, Parliament is apt to be influenced by the attitude of its property notably in its concern with finance. It becomes necessary for Parliament to appraise the limitations of Canadian National policy in the interests of the economy as a whole and to recognize a sharp distinction between the financial balance sheet of the Canadian National Railways and the welfare of the economy. Failure to recognize this distinction is a blow to Confederation since it permits an instrument of Parliament to strengthen favoured regions at the expense of weaker regions. A reluctance of Parliament to consider other factors than a balance sheet is enhanced by the interest of the central provinces in supporting extension of roads and the use of motor vehicles and in attracting highly remunerative railway traffic in a densely populated region. It is easier to accept a practice in which the costs of relative obsolescence of the railways is shifted through a favourable balance sheet to long haul traffic to other regions unable to evade it than to accept an unfavourable balance sheet and to meet a deficit. Parliament may easily develop a vested interest in a device by which an industry based on iron and coal becomes to some extent obsolescent in competition with roads and oil. ↘

Confederation involved the building of railways notably the Intercolonial and the Canadian Pacific Railway and the deepening of canals. As canals became relatively obsolescent in the face of railway competition, the burden of debt was carried by Parliament. As railways became relatively obsolescent in the face of competition from motor vehicles sponsored by stronger regions the burden of debt has been conspicuously carried by weaker regions as well as by Parliament. ✓

Solution to the transportation problem includes consideration of the adjustment of the burden of obsolescence by transcontinental railways which will preclude undue imposition on long hauls and on regions other than the St. Lawrence and in a sense a defeat of the purposes of Confederation. The problem of duopoly in relation to regions was sharply illustrated in evidence submitted by Prince Edward Island. In a duopoly the territory served by each railway without fear of competition from the other railway becomes a monopoly. Traffic within this territory is favoured by a single line rate and traffic with another railway discouraged by a refusal to grant similar rates. Even in the case of the Quebec Central Railway under a lease to the Canadian Pacific Railway through rates on interline traffic are limited. As a result an artificial division is set up within the economy as a whole between regions served by each railway. A bulge in the costs of transportation emerges at points at which traffic is interchanged between different railways which becomes more serious with horizontal increases. Situated at the eastern extremity of Canada and under a monopoly of the Canadian National Railways, Prince Edward Island complained of its position in the federation. In arguments submitted in favour of amalgamation it was implied that each railway exploited the territory over which it had control and that costs of competition in competitive territory were met in part in non-competitive territory.

From the evidence submitted by Prince Edward Island it was apparent that the monopoly position of the Canadian National Railways had been used to restrict motor vehicle operations. The province is particularly exposed to the dangers of a monopoly of a relatively obsolescent type of transportation in restricting an extremely important source of revenue in the motor car and the

tourist trade. Complaints were made of the monopoly of the railway over the ferry between Borden and Cape Tormentine on the mainland in restrictions on trucks and that shippers in Prince Edward Island were at a disadvantage with shippers in New Brunswick. The province argued that the Canadian National had become an instrument through which the intent of the terms of Confederation was being flouted. The problems of competition with the motor truck in the St. Lawrence region seem to have been met in part by the monopoly control of railways in other regions.

The arguments of Prince Edward Island in favour of an amalgamation of the railways as a means of reducing the costs of railway operations and in turn the burden of increased rates on the long haul as a result of truck and water competition in the St. Lawrence region have less force since the dangers of excessive railway competition feared by the Duff Commission have receded as duopoly has emerged under the pressure of competition from new types of transportation. Conditions under a duopoly will not differ fundamentally from conditions under amalgamation. Under a monopoly following amalgamation, the problem of truck and water competition particularly in the St. Lawrence region and of attempts to shift the burden through the long haul to other regions would persist though it might not be obscured as under the present system of duopoly. Indeed evidence was submitted which suggested that the Canadian National-Canadian Pacific Act might with advantage be repealed since it obscures the essentially duopolistic character of the railways in a presumption of competition which has long since ceased to exist. Co-operative activity under the Act was very largely limited to the period immediately following its enactment. More recently it has shown signs of becoming a device to prevent a more active line abandonment policy on the part of both roads:

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The complexity of problems of adjustment is enhanced and the effects of competition in the St. Lawrence region obscured by the importance of international rates in relation to wages and prices. Joint international rates between Canada and the United States apply chiefly between points in Eastern Canada and points in the Eastern United States where the amount of international traffic is large. It is estimated that in the year 1949 23% of the total traffic of Canadian Railways, including \$70 million for the Canadian Pacific Railway; of which about 2/3 is concentrated in Eastern Canada, and 1/3 in Western Canada, and \$75 million for the Canadian National Railways of which about 10% is in the Maritimes, 70% in Central Canada and 20% in the West, is obtained from international traffic. Since rate increases have recently taken place more frequently and in greater amounts in the United States than in Canada, and since the Board permits the same increases in Canada on international rates at the same time that they are applied in the United States, the revenues of Canadian railways obtained from international and related traffic are substantial.

Expenses in connection with the traffic are increased by the movement of empty cars both north and south. Southbound traffic is restricted in the main to low grade products, because of American customs regulations which favour American industries, and include lumber, woodpulp, newsprint, aluminum, cattle, potatoes, and turnips. It involves a southward movement of high grade box cars. Northbound traffic includes coal and coke, iron and steel, machinery, fruit and vegetables, California and Southern lumber, cotton, linseed meal and canned goods and involves the use of special cars, particularly hoppers. To offset these expenses the wages of labour on Canadian railways are lower than on American railways. Moreover, international rates appear to be relatively free from truck competition, as trucks are prohibited from carrying goods in bond to interior Canadian points where customs duties are paid.

Legally, international rates in Canada are under the control of the Board of Transport Commissioners but actually they are determined by the Interstate Commerce Commission. An important part of the revenues of Canadian railways is therefore beyond the jurisdiction of the Board of Transport Commissioners. An increase in revenue as a result of the more rapid advances in rates permitted by the Interstate Commerce Commission might be expected to strengthen the position of the Canadian railways, and to lessen their pressure on the Canadian rate structure and their demands on the Board of Transport Commissioners. In a sense the Interstate Commerce Commission has been a useful auxiliary to the Board of Transport Commissioners. On the other hand, it weakens the Board by making it less sensitive to public demands and less active in taking the initiative in rate adjustments. The activity of the Interstate Commerce Commission favours the inactivity of the Board of Transport Commissioners.

While rate increases resulting from action of the Interstate Commerce Commission may reduce the pressure of Canadian railways on the Board for an increase in rates in the short run, they may increase the pressure in the long run. They will become concerned with an increasing disparity between Canadian domestic rates controlled by the Board of Transport Commissioners and international rates determined by the Interstate Commerce Commission and will become active in demanding increases in Canadian domestic rates to bring them to the level of international and American rates. Increased rates in the United States are followed by increased wages and by the demands for increased wages by Canadian unions. In the words of a spokesman of the unions "there cannot be full satisfaction of the employee's views and demands until Canada-United States parity is restored". Attempts of labour to increase wages to the American level are followed by attempts to increase railway rates in Canada to the American level. An increase in international rates in Eastern Canada as a result of advances in rates in the United States implies a direct pressure of American price levels on Canadian prices and wages and increased costs of operation particularly in Central Canada.

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Increased costs especially wages following the influence of the United States compel the railways to attempt substantial rate increases which involve serious disturbances in areas that are particularly dependent on the European markets such as have been evident in the sustained character of opposition from regions other than the St. Lawrence. In 1949 the payroll of the Canadian Pacific was 56.6% of operating expenses and of the Canadian National Railways, 59.5% of operating expenses. The higher wages bill of the Canadian National is in part a result of the relatively higher proportion of less than carload freight and of the higher labour costs of operating in a densely settled area. But it also suggests that a government owned railway will tend, because of political implications, to pursue a cautious policy with respect to employment and that it has less freedom to adjust labour costs rapidly than the Canadian Pacific. In a period of depression the Canadian National will perhaps be more exposed to the pressure of public opinion to maintain employment particularly in maintenance work, but the Canadian Pacific will be compelled to follow a similar policy.

Since labour insists on its rights to appeal to the final authority of the Governor in Council or of Parliament it may be expected to recognize the position of the Canadian National Railways as a government owned railway. "Labour in Canada has never given up the right to use its economic strength if necessary and has never been asked to do so." The threat of a strike and a forthcoming election were accompanied by an appeal to the government and an increase of 17 cents an hour in 1948, and the strike was followed by the calling of Parliament and the enactment of legislation in 1950. Increases in wages

sanctioned by the government as the owner of the Canadian National and involving a decline in revenue have immediate implications for the Canadian Pacific. It is continually threatened by the influence of labour and the possibility of successful appeals to the government as the owner of the Canadian National Railways. Reduction of the revenues of both railways weakens the possibility of securing capital for the introduction of labour saving devices or for developmental projects but the effect is more serious for the Canadian Pacific than for the Canadian National. Labour gains directly by an increase in wages and indirectly by the difficulties of the railways in securing capital, in introducing technological improvements, and in eliminating obsolescent plant notably in abandoning branch lines.

The difficulties of the Canadian Pacific Railway in securing capital compels its officials to take active initiative in securing an increase in rates following increases in wages. The Board of Transport Commissioners has recognized the importance of the requirements of the Canadian Pacific Railway as a basis of rates but these requirements from the standpoint of wages have been determined to an important extent by the position of the Canadian National Railways as a government owned road. Moreover, the rates allowed by the Board in relation to the requirements of the Canadian Pacific have not been fully conceded by the Canadian National since the extent of its lines in the St. Lawrence region precludes it from agreeing to the addition of the full amount on competitive traffic. Since the Canadian Pacific is compelled to recognize the refusal of the Canadian National to concede increases on competitive rates it is weakened in its claim for horizontal increases on long haul traffic since rates on this traffic would be thrown increasingly out of line with rates in the St. Lawrence region. Moreover, the Canadian National has shown signs of reluctance in supporting the full demands of the Canadian Pacific and of anxiety to escape from the odium attached to demands for rate increases. It did not join in the attacks of the Canadian Pacific Railway on the Crowsnest Pass rates and in the appeal to the Supreme Court against the 8% judgment in 1949.

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Increased wages were followed by demands for increased rates. Limitations on increased rates on competitive traffic tend to increase the burden on rates on non-competitive traffic. The position of the Canadian National as a government owned railway in relation to public opinion and the demands of labour, and its importance in the St. Lawrence region tend to make it an instrument designed to increase the burden of the long haul or to turn it from an instrument designed to promote tendencies toward equality between regions, to an instrument designed to reverse such tendencies. It has been part of the task of the Commission to suggest methods and devices by which the effects of the change may be offset.

We have discussed in the chapters on the Maritime Freight Rates Act, economic, geographic and other disadvantages, horizontal increases and elsewhere the importance of a system of maxima and of other devices in meeting the demands for a flexible rate structure. Much evidence was presented to show the effects of truck and water competition in the St. Lawrence region, of the protective system, of wage increases, of passenger losses and of statutory rates on the rate structure. The extent of the burden imposed on the long haul to Western Canada and to the Maritimes was suggested from many directions

The Railway Association of Canada presented calculations to support a possible conclusion that direct and indirect net losses of freight revenue due to truck competition might be estimated at \$120 or \$130 million for both railways. Since a substantial proportion of this loss must be allocated to the St. Lawrence

region, it might be assumed that it is made up to an important extent on the long haul on other regions.

The Province of Manitoba pointed to the losses on passenger traffic, their imposition on freight traffic, particularly on the long haul, and the possibility of a subsidy to that extent from the government. According to various methods of calculation, estimates of these losses would range from \$8 million to \$28,866,961 for the Canadian Pacific Railway or possibly twice these amounts for both railways.

While no recognition was given to the estimates of the Canadian Pacific Railway of the extent to which the Crowsnest Pass rates were not compensatory on its lines, it is of interest to note that these estimates ranged from \$13,769,000 to \$16,947,000 or possibly double these amounts on both railways for the year 1948. It may be assumed that such amounts would be paid from revenue obtained from other rates particularly on goods moving under the higher freight classifications. The Canadian Pacific held that if Crowsnest Pass rates had borne their proportion of the general freight rate increases, the increase in the 21% case should have been 18%. In the total of 45% rate increases following recent decisions, an increase in the Crowsnest Pass rates would have meant an increase of about 38½%.

Minimum losses on both railways attributable to the Crowsnest Pass rates \$27,500,000, passenger traffic \$16,000,000 and competition from trucks \$120,000,000 possibly involves a total of \$163,500,000. This amount cannot be allocated specifically to long haul traffic but the statutory character of Crowsnest Pass rates, competition from water and truck in the St. Lawrence, and to some extent in the Maritime regions, and the inability to regulate competition of such transportation under provincial jurisdiction, and competition from the motor vehicle and air transport in passenger traffic, imply that rates will be borne to an important extent by long haul traffic notably in relatively non-competitive territory such as the Western provinces with little prospect of relief by decisions of the Board. The Traffic Adviser of the Commission estimates that "the difference between the high class rates within Western Canada and from Eastern to Western Canada and the lower class rates of the Eastern town tariff scale" including the 20% increase of 1950 totals \$14,563,519 on a year's basis.

Various proposals have been advanced to ease the burden of the long haul on the Western provinces. Mr. Walter Tucker, Leader of the Liberal Party in the Province of Saskatchewan drew our attention to a proposal advanced by him in a speech in the House of Commons on March 11, 1947 and to a resolution of the National Liberal Convention, held at Ottawa in 1948. In the resolution reference was made "to the claims of Western Canada that a large expenditure of money has been made by the Government of Canada to build canals and other public works in Central Canada, to improve water transportation, thereby forcing competitive rates down in Central Canada resulting in rates elsewhere having to be increased to provide the necessary railway revenues; and also the further claim that national policy has caused trade to flow in uneconomic channels whereby, for example, the trade of the Prairies in large measure has had to pass over a large unproductive area so far as freight revenues are concerned between the Prairies and Central Canada with a resulting extra freight burden on the prairies, which extra burden should, in equity, be borne at least in part by the nation as a whole". Mr. Tucker advanced the proposal that "the large stretch, the unproductive spread between west of the lakes and east of Winnipeg" over which traffic must be handled both ways be treated as "a river to be crossed, where you provide a bridge at public expense or perhaps where you provide a canal on which you can haul goods and do so at the expense of the public". "If the costs of hauling goods across that unproductive area were paid by the

state it would increase development, not only in Western Canada but in Eastern Canada as well." "That would be better than increasing freight rates." No estimate of the cost involved in the proposal was presented. An approach to the subject might be made by estimating the cost of maintenance of 600 miles of each railway. For both railways this might range from a maximum of \$6,500,000 to a minimum of \$4,200,000.

Following a study of the successful operation of the Maritime Freight Rates Act, the Province of Saskatchewan asked for a reduction of 20% on all freight bills on all rail traffic in the prairie provinces, on all rail and all lake and rail freight traffic originating in the prairie provinces, excepting grain and grain products moving at Crowsnest Pass rates, to the point of destination in other provinces, and on all rail and lake and rail freight from other provinces terminating in the prairie provinces involving a total estimated subsidy in 1948 of about 40 million dollars.

While the proposal has advantages in the ease with which amounts can be calculated, it has distinct limitations in that eastbound freight has the advantage of low rates under the Crowsnest Pass Rates Act and of constructive mileage between Winnipeg and the head of the lakes. The waybill study (expanded from four days to one year) shows a movement of class rate traffic from British Columbia and the Western provinces eastbound bringing revenue of \$2,336,080 and a movement of class rate traffic westbound to the prairie provinces and British Columbia of \$30,761,491. "For the four days of the study 968 cars with an average load of 15.6 tons, revenue of \$620 per car and an average haul of 1828 miles moved from east to west, and 1002 cars with an average of 29.7 tons, revenue of \$507 per car and an average haul of 1932 miles from west to east." A reduction of rates on class rates traffic in the Western region and westbound would offer the greatest immediate relief. Such a reduction would encourage long haul and local traffic in Western Canada producing the greatest revenues. An increase in this traffic would be of the greatest advantage to the railways in the utilization of equipment and the reduction of expenses. It would be of advantage to producers and consumers in the Western provinces and to producers in the St. Lawrence and Maritime regions.

Rates on westbound traffic have been of direct interest to the railways, to the Western Provinces and to Parliament. In the Crowsnest Pass Rates Act of 1897, reductions on the movement of certain items westbound ranging from 33⅓% to 20% to 10% were made statutory by Parliament. These reductions were eliminated in 1925. The constructive mileage between Fort William and Winnipeg in which 420 miles becomes 290 miles involves a reduction of mileage over this territory of roughly 30%. At present westbound traffic is encouraged by a constructive mileage involving a decrease of 30%, reduced to 21%, by "tapering" off of the standard mileage rate between Fort William and Winnipeg, and to tapered distributing class rates of 15% below the standard mileage rate west of Winnipeg.

Under these circumstances the most effective method of bringing relief would be recognition of the 30% off of the standard mileage rate for 420 miles between Fort William and Winnipeg instead of 21%. Extension of this reduction west of Winnipeg would involve 30% off the standard mileage rate instead of 15% off the present distributing class rates. As in the case of the Maritime Freight Rates Act the freight paid by the shipper would be reduced and the difference paid to the railways by the Federal Government. The Commission's Traffic Adviser estimates that this reduction would have cost \$5,236,270 in 1950. It should become an investment leading to lower costs of primary and secondary products in the West, revenue for the railways, larger markets for manufacturers in Western Canada, the central regions and the Maritimes, and a stimulus to trade within Canada.

Recognition of the effects of truck and water competition in the St. Lawrence region on the railway rate structure and an attempt to offset its unfortunate implications for the Western Provinces must be accompanied by an active concern in the development of a flexible rate structure through the use of maxima for the Maritimes. A rate structure which in its emphasis on the value of service principle reflects the influence of water competition and in which statutory legislation has been introduced to reinforce the general emphasis in the Crowsnest Pass rates by maintaining low rates on shipments of grain from the Prairie Provinces and in the Maritime Freight Rates Act by checking the effects of high rates on shipments of manufactured products from the Maritimes is particularly exposed to the effects of horizontal increases and of inflation which involve more rapid absolute increases in rates on manufactured products in the upper classifications than in goods in the lower classifications. The markets for products in the higher classifications shipped from the Maritimes to other parts of Canada are narrowed and the burden of rates on such products from Central and Eastern Canada to Western Canada is increased. No scheme of equalization can be devised which will overcome the effects of competition in the St. Lawrence region as reflected particularly in competitive rates. An obsession with equalization will obscure the handicaps of the Maritimes and of Western Canada and perpetuate their paralyzing effects. A reorganization of the regulatory bodies concerned with transportation will facilitate collection of vital statistical facts and offset the most serious effects of a duopoly in its control of information. In this way more precise methods can be devised to meet the problems of transportation in Canada.

